

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

— — —

COMCAST CABLE : CIVIL NO. 12-859  
COMMUNICATIONS, LLC, :  
et al., :  
Plaintiff :  
:  
:  
:  
:  
v. :  
:  
:  
:  
:  
:  
:  
SPRINT COMMUNICATIONS : Philadelphia, Pennsylvania  
COMPANY L.P., et al., : February 1, 2017  
Defendant : 9:52 a.m.

— — —

TRANSCRIPT OF MORNING SESSION OF JURY TRIAL DAY 3  
BEFORE THE HONORABLE JAN E. DUBOIS  
UNITED STATES DISTRICT JUDGE

\_\_\_\_\_

APPEARANCES:

For the Plaintiff: WILLIAM T. HANGLEY, ESQUIRE  
Hangley, Aronchick, Segal, Pudlin  
& Schiller  
One Logan Square  
27<sup>th</sup> Floor  
Philadelphia, PA 19103

DANIEL J. GOETTLE, ESQUIRE  
Baker & Hostetler, LLP  
Cira Center  
12<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104

TK Transcribers  
1518 W Porter Street  
Philadelphia, PA 19145  
609-440-2177

1 APPEARANCES: (Continued)

2 For the Defendant: DAVID E. FINKELSON, ESQUIRE  
3 BRIAN C. RIOPELLE, ESQUIRE  
4 McGuire Woods, LLP  
Gateway Plaza  
800 East Canal Street  
Richmond, VA 23219

5  
6 COLLEEN H. SIMPSON, ESQUIRE  
Harkins Cunningham, LLP  
4000 Two Commerce Square  
2001 Market Street  
Philadelphia, PA 19103

8 - - -

9 Audio Operator: Michael Cosgrove

10 Transcribed By: Michael T. Keating

11 - - -

12 Proceedings recorded by electronic sound  
13 recording; transcript produced by computer-aided  
14 transcription service.

15 - - -  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 (The following was heard in open court at  
2 9:52 a.m.)

3 THE COURT: Good morning, everybody.  
4 Please be seated. We're going to proceed with  
5 opening statements and then the evidence this  
6 morning. But before we do, I want to explain very  
7 briefly what the situation was with juror number 7.  
8 I don't want you to think jurors meet with me at the  
9 end of the day and then they disappear.

10 Juror number 7 shared with us at the end of  
11 the day things that he should have shared with us, as  
12 you all did, at sidebar when we had the individual  
13 voir dire at sidebar. Had he shared with us what he  
14 told us at the end of the day at the beginning of the  
15 day, we would have excused him. He had a very, very  
16 compelling family situation. And so at the end of  
17 the day I decided I would excuse him and we'll  
18 proceed with a jury of nine. And with that, are you  
19 ready to proceed, sir?

20 MR. GOETTLE: I am, Your Honor.

21 THE COURT: All right. Mr. Goettle will  
22 open for Comcast.

23 MR. GOETTLE: Your Honor, do you want me  
24 behind the podium or can I be in front of the podium?

25

Plaintiff's Opening Statement

4

1 THE COURT: Not too close to the jury. You  
2 can be in front of the podium or behind the podium.

3 MR. GOETTLE: Thank you, Your Honor.

4 THE COURT: I see you've rearranged my  
5 courtroom a little bit. I don't think that's my  
6 regular lectern.

7 AUDIO OPERATOR: I moved that.

8 THE COURT: Oh. Overruled again. You  
9 didn't remove it completely? It's still around  
10 somewhere, is it not?

11 AUDIO OPERATOR: Yes.

12 THE COURT: All right. Thank you. You may  
13 proceed, Mr. Goettle.

14 PLAINTIFF'S OPENING STATEMENT

15 MR. GOETTLE: Good morning. Speed. Speed  
16 is one of the most important things we report in our  
17 cell phones. Speed. When we want to connect our  
18 phone to other phones, to other networks, one of the  
19 things we want is speed. And if we don't get speed  
20 in our phones and other carriers can provide that  
21 speed, we might think about switching. That's how  
22 important speed is to us. That's what the evidence  
23 in this case is going to show.

24 The patent at it's core is about speed. I  
25 said the word "core" on purpose because that's going

## Plaintiff's Opening Statement

5

1 to be a word that you're going to hear a lot in this  
2 case, "core," and specifically, "core network  
3 elements." Speed is at the core of this patent. And  
4 this patent is what Sprint has been infringing since  
5 at least 2006. Sprint has been getting the benefit  
6 of this invention and the speed characteristics from  
7 this invention since 2006, and that's what brings us  
8 into this courtroom here today.

9 Good morning. My name is Dan Goettle. My  
10 team represents Comcast. At counsel table we have  
11 Mr. Bill Hangley and we have Mr. George Medlock. Mr.  
12 Medlock is the Chief Patent Counsel of Comcast based  
13 here in Philadelphia. Mr. Medlock was promoted to  
14 that position just a few short weeks ago from the  
15 ranks of Comcast on January 13<sup>th</sup> to Chief Patent  
16 Counsel of Comcast. We have Mr. Dale Heist and Ms.  
17 Rebecca Melley.

18 In terms of who you will see on their feet  
19 examining witnesses today, that will be Mr. Heist,  
20 Ms. Melley, Mr. Hangley, and myself. The -- at the  
21 computer we have Mr. Ricky Dyer, so he will be  
22 controlling the graphics that you see while we're  
23 doing the presentation of our case. He will be doing  
24 the highlighting, making sure that we're bringing out  
25 evidence to you in as clear and concise and as speedy

## Plaintiff's Opening Statement

6

1 manner as we can. And then the oil that keeps our  
2 wheels spinning quickly so that we can put this case  
3 on quickly and succinctly through you so that you can  
4 get to your deliberations and go back to what you had  
5 been planning on doing, that oil is Mr. Larry LaBella  
6 and Ms. Kim Ferrari. You will see them handing us  
7 documents, whispering in our ears, all in an effort  
8 to make sure that we, the lawyers, stay focused to  
9 put this case on quickly and succinctly.

10 Okay, back to speed and the patent. Mr.  
11 Dyer, can you put up PX-2? And go to page two of  
12 PX-2.

13 (Pause in proceedings.)

14 THE COURT: Are your screens all working?  
15 Well, you can use the screens in front of you or the  
16 big screens. You can't use the one across the  
17 courtroom. Use that one.

18 MR. FINKELSON: That's not on.

19 THE COURT: Not on?

20 (Pause in proceedings.)

21 THE COURT: Thank you, Michael.

22 AUDIO OPERATOR: You're welcome.

23 MR. GOETTLE: Mr. Dyer, can you highlight  
24 the 1999 date on that PX-2 at page two?

25 (Pause in proceedings.)

## Plaintiff's Opening Statement

7

1 MR. GOETTLE: The invention, ladies and  
2 gentlemen, was invented in 1999. That's what's shown  
3 on the patent that you are going to be learning about  
4 in this case. So I would like you to do is imagine,  
5 if you can, and remember what cell phones were like  
6 in 1999, and as you imagine it, I'm going to tell you  
7 what the evidence is going to show you.

8 What the evidence is going to show you in  
9 this case is that in 1999, unlike today, not  
10 everybody had cell phones, in 1999, unlike today,  
11 when people that had cell phones didn't always turn  
12 them on. They left them in their purse, they left  
13 them in their pockets, they were used for emergency  
14 purposes only.

15 In 1999, cell phone coverage wasn't what it  
16 is today. In 1999, cell phone coverage was decent in  
17 the cities, the evidence will show you, but as you  
18 moved outside of the cities, cell phone coverage  
19 became worse and worse. The cell networks just were  
20 not that -- not as good as they are today. And the  
21 cell phones themselves were vastly different than  
22 they are today. Today, the smart phone is  
23 ubiquitous. We see it all the time. We know what it  
24 looks like. They're more like mini computers than  
25 they were like the house phone.

## Plaintiff's Opening Statement

8

1           That wasn't the case in 1999. In 1999, the  
2 evidence will show you that cell phones were like the  
3 house phone. They had a speaker that you could hear  
4 in, they had a microphone that you could talk in, and  
5 they had a numbered keypad. What was the numbered  
6 keypad for? Well, you probably remember, but the  
7 evidence is going to show you anyway, that numbered  
8 keypad was for dialing phone numbers. That was for  
9 making phone calls. That's how cell phones were in  
10 1999 and that's how they were used. They were  
11 thought of as cell phones.

12           Now, in 1999, the inventor on this patent,  
13 the evidence will show you, was dealing with what she  
14 foresaw as a problem that was coming. That problem  
15 related to volume of messages, messaging volume.  
16 We've heard a little bit about what this patent is  
17 about. I know you've been instructed on it and I  
18 think you already know, but the patent is about  
19 messaging, text messaging, MMS messaging.

20           So I just said the first acronym of many  
21 acronyms you're going to hear in this case. MMS,  
22 that stands for Multi-media Service Messaging, MMS.  
23 The other acronym you're going to hear a lot in this  
24 case is SSM, Short Message Service Messaging, SMS.  
25 Those are text messaging features. That's what



## Plaintiff's Opening Statement

9

1 people think of today as -- colloquially, you call it  
2 text messaging.

3 Skilled artisans in the field at the time  
4 of this invention and today, they were proof that  
5 text messaging was SMS or MMS. In your binder, your  
6 jury binder -- and Judge Dubois mentioned this to you  
7 yesterday -- you have a list of acronyms in there.  
8 This industry is acronym-driven. They like they're  
9 acronyms. They're like friends. And so the  
10 witnesses will be speaking in terms of the acronyms.  
11 The lawyers are going to do their best to make sure  
12 that we're speaking to you in plain English, but if  
13 an acronym slips out and you're not sure what it is,  
14 if we've done our jobs right, you'll be able to go  
15 through that tab in your binder and you'll see what  
16 the acronym stands for.

17 So in 1999, here's what the evidence will  
18 show you about the state of messaging. SMS messaging  
19 was already known by 1999. It had been developed by  
20 the industry prior to that starting around, the  
21 evidence will show you, 1995 time frame. And what  
22 the industry did was they got together so that the  
23 companies that make cell phones would know how to put  
24 the technology on the phone to do SMS in a way so  
25 that it would connect inside cellular networks with

## Plaintiff's Opening Statement

10

1 the various components inside cellular networks and  
2 it would work.

3 The evidence will show you that because the  
4 industry had gotten together to do that, the cell  
5 phone manufacturers would know all I got to do is I  
6 got to make sure that when I put my technology on  
7 this phone for SMS I got to make sure it sends out  
8 the signals in this right format so that the  
9 equipment in the cellular network will know how to  
10 deal with that signal when it receives it so that  
11 they will communicate. And then this way the  
12 industry knew that cell phone manufacturers, you make  
13 your phones this way; cellular network operator, you  
14 buy this equipment and have it set up this way, and  
15 then we know it will work when they're put together.  
16 That had already happened for text messaging for SMS  
17 messaging by 1999. But the standard text messaging  
18 in 1999 was not -- wasn't a hugely used product,  
19 the -- or service.

20 The evidence will show you that it was very  
21 new and not heavily used. Why? Well, it goes back  
22 to what we've already talked about. Cell phones at  
23 that time were largely viewed as extensions of the  
24 house phone. And the evidence will show you that  
25 house phones were not -- were not used for messaging.

## Plaintiff's Opening Statement

11

1 House phones, the wire phones, the phone hanging in  
2 the kitchen, was not a phone that you used for  
3 messaging. It never -- would never come up. And so  
4 cell phone and text messaging hadn't quite caught on  
5 yet.

6 The reason for that -- one of the reasons  
7 for that, the evidence will show you, goes back to  
8 that numbered keypad. It's hard to send a message  
9 using a numbered keypad. You might recall, and the  
10 evidence will show you that, for example, the numbers  
11 were assigned letters. Number two on the phone --  
12 not number one for some reason, but number two on the  
13 phone was assigned the letters A, B, and C. So if  
14 you wanted to type in a letter on a phone, on a  
15 numbered pad, and you wanted to type the letter A,  
16 well, that was easy. You pushed the number two one  
17 time.

18 If you wanted to type in the letter C on  
19 that same phone, you had to toggle to C. You had to  
20 push the number two one time, you had to push it  
21 again to get B, and that will get you -- two times  
22 would get you B. Three times would get you C. It's  
23 not super conducive for text messaging, and the  
24 evidence will show you that the numbered keypad on  
25 the phone was the predominant type of cell phone at

## Plaintiff's Opening Statement

12

1 the time.

2           So in 1999, the vol -- the message volume  
3 wasn't a big problem that the inventor was thinking  
4 about at that time. It hadn't become a big problem  
5 yet. But what the evidence will show you is that the  
6 patent describes and the inventor describes -- in her  
7 patent, she describes that message volume is going to  
8 be a problem, and here's why. We want speed in our  
9 cell phones. We want our phone to connect to other  
10 phones, to connect to other networks, fast. And if  
11 we're taking those core components in our cellular  
12 network and distracting them by having to deal with  
13 an increasing volume of messaging, increasing volume  
14 because multi-media messaging with the bigger  
15 messages that can send video, that can send audio,  
16 that can send pictures, those were being developed in  
17 1999, and the inventor talked about that in her  
18 patent.

19           So the inventor describes that message  
20 volume is going to increase and that's going to be a  
21 problem, and here's why. Cell phones are sometimes  
22 off. Cell phones sometimes are not in the range of  
23 the cellular network operator. They're out of range.  
24 Maybe they're in a rural area. Maybe it's just not  
25 good cell phone coverage. Sometimes those messages

## Plaintiff's Opening Statement

13

1 that need to be delivered can't be delivered. Those  
2 messages that need to be delivered can't be  
3 delivered. And what that means is those components  
4 that are charged with the duty of insuring that that  
5 phone can connect to that other phone, that phone can  
6 connect to this network, now they're going to be  
7 distracted. They need to speedily make these  
8 connections, and now they're also going to have to  
9 keep track of messages.

10 They're going to receive a message from the  
11 phone and they're going to be sitting there and they  
12 have to check is the phone on? Where is the phone?  
13 Has the subscriber paid for the service to receive  
14 these types of messages? It's going to need to be  
15 checked. And if the phone is off, if the phone can't  
16 be found, now those components are distracted because  
17 now they're not focused on the duty of speedily  
18 connecting phones to other phones. They're now  
19 distracted with the duty of managing these messages,  
20 holding onto these messages, waiting for the phone to  
21 turn back on, and then saying that phone is back on,  
22 I think I have a message for that phone, I do have a  
23 message for that phone, now I'm going to deliver it.

24 The inventor in this patent describes, and  
25 the evidence will show you, that the inventor of this

## Plaintiff's Opening Statement

14

1 patent was facing that problem of this potential  
2 increase in message volume, and here was the solution  
3 that she came up -- or part one of the solution.  
4 There's a two part solution. Here's part one.

5 Part one was that, you know what, let's not  
6 bog the network down with these messages. Let's not  
7 bog down that computer with that core technology  
8 that's needed to get the phone to connect to other  
9 phones and to other networks, let's not bog it down  
10 with messaging. Instead, let's have specialized  
11 computer equipment, server computers, that handle  
12 these messages. So instead of the message getting  
13 sent right in to those -- to those core network  
14 functions that are dealing with connecting calls,  
15 let's keep it away from that. Let's set it up in a  
16 specialized computer system so that that deals with  
17 the messages. She called those -- that specialized  
18 computer servers messaging servers. Those are the  
19 servers that are going to receive the message first.

20 Now, part of this -- this part of her  
21 solution was with the notion that look, they'll  
22 receive a message and they're going to hold onto the  
23 message and they're going to keep the message until  
24 the network -- until those components that are  
25 charged with that duty of connecting the phone to

## Plaintiff's Opening Statement

15

1 other networks and to other phones, until they tell  
2 the messaging server you can receive them, you can  
3 send a message on, the phone is on, the phone can  
4 receive, the subscriber has paid her bills, you can  
5 go ahead and send the message. And then, and only  
6 then, is the message sent into those core components  
7 through the network where it sails right out like  
8 butter to the recipient phone. That was part one of  
9 her invention, messaging server away from those core  
10 components, not distracting those core components  
11 with messages that can't be delivered, when the  
12 mess -- when the messaging server receives  
13 notification we found the phone, you can send a  
14 message, the message gets sent into the message --  
15 into the network where it can just sail right  
16 through, and now those components charged with the  
17 duty of speedily connecting the phone to other  
18 networks, the phone to other phones, don't have to be  
19 distracted with the network -- sorry, with the volume  
20 of the messages. That will be maintained outside.

21 If it turns out that the phone is not on,  
22 if the phone can't be found, then that messaging  
23 server will be told by those four components hang  
24 onto the message, try again later, we can't find the  
25 phone right now. And now it's the messaging server's

## Plaintiff's Opening Statement

16

1 job to hold onto the messages and not bog down those  
2 core network components. Part one of her invention.

3 Second part of her invention is now, since  
4 you don't have those core components dealing with the  
5 messages and, instead, have a separate messaging  
6 server dealing with the message, how is that separate  
7 messaging server supposed to know is the phone on,  
8 can the phone receive this message? Because it's not  
9 part of the other process, it doesn't know.

10 So the inventor made a compromise. The  
11 compromise is this, and the evidence will show you  
12 this, and I'm going to walk through the claim and  
13 show you where this is in the claim. But the  
14 inventor made a compromise. The core components  
15 charged with the duty of making the connections to  
16 phones, one phone to another phone, one phone to a  
17 network, they're not off the hook completely.  
18 They're going to have to play a rule. And here's the  
19 role they're going to have to play.

20 You, messaging server, when you receive the  
21 message do not send the message to us. This is from  
22 the perspective of these core elements. Do not send  
23 the message to us. But you can interrupt us a little  
24 bit. Interrupt us with a question. You can send in  
25 an inquiry to us, tell us what the phone number is of



## Plaintiff's Opening Statement

17

1 the phone you're trying to find out about and we'll  
2 do a lookup in our database that we use to track  
3 phones. We'll do a lookup, we'll find out where the  
4 phone is, we'll find out if the phone can receive it,  
5 and we'll let you know.

6 So those components that are dealing with  
7 the connections have a role to play and they're going  
8 to be a little distracted. But they don't have to  
9 keep track of the messages. They just receive them.  
10 An inquiry is the claim term, an inquiry, and they  
11 send a response. And now the messaging server can  
12 hold onto the message and wait for a response. And  
13 the inventor said -- and this is shown in the patent  
14 and the evidence will show you the inventor said if  
15 the components that deal with connecting the phone to  
16 other networks, if those components do not store the  
17 information by the phone number, but store it by some  
18 other identifier for the phone, like a serial number,  
19 if that's how the network stores its information,  
20 that's okay too. Here's how it will work.

21 You, messaging server, when you receive the  
22 message keep the message. Don't send us the message.  
23 We don't want it yet. Send an inquiry to the  
24 cellular network. You, core network components, you  
25 do a lookup in your database and find out if the

## Plaintiff's Opening Statement

18

1 phone is on, find out where it is, find out if the  
2 subscriber has paid for the service.

3 If you, cellular network -- you, core  
4 components, that are charged with the duty of  
5 connecting the phone to other networks, if you don't  
6 store the information by phone number, the  
7 information that you got from the messaging server,  
8 but, instead, store the information by serial number,  
9 that's okay. Cellular network, you do a mapping.  
10 You just take the phone number in, map it to the  
11 information you need, your internal identifier of the  
12 phone, and do the lookup using the internal  
13 identifier, and send back the response.

14 So, ladies and gentlemen, that's the  
15 invention that -- of the patent. That's what the  
16 evidence will disclose. We will have testimony later  
17 on to flesh it out. I know I walked through that a  
18 little bit quickly. But I do want to walk through  
19 the claim and give you a grounding in the claim so  
20 you know kind of the target that we're shooting at  
21 here.

22 Judge Dubois explained yesterday that  
23 you're going to be tasked with the job of comparing  
24 the asserted claims in the patent to Sprint's network  
25 and deciding whether Comcast has proven that Sprint's

## Plaintiff's Opening Statement

19

1 network practices the elements of the claim. And  
2 since that's the target you're going to be shooting  
3 at, I think it's worth the time to just kind of walk  
4 through it. I'm going to walk through it in a  
5 relatively fast fashion, but I want to walk through  
6 the patent claims so that you know the target we're  
7 shooting at.

8 So, first of all, Mr. Dyer, can you pull up  
9 page 13 and blow up claim one?

10 (Pause in proceedings.)

11 MR. GOETTLE: Actually, let me make sure  
12 there's no confusion here. I think there's going to  
13 be a little confusion. We're going to talk a little  
14 bit about a re-examination that happened to this  
15 patent. So what you're looking at on the slide and  
16 what's on page PX-2.013, that's claim one of the  
17 patent, of the originally issued patent. And I'm  
18 going to explain that Comcast asked the Patent Office  
19 to re-examine the patent after Comcast bought it from  
20 Nokia. And so the Patent Office did re-examine the  
21 claim and then -- Mr. Dyer, can you pull up page 17?

22 MR. GOETTLE: -- and issued what's called a  
23 re-examination certificate. That's page -- on page  
24 17. Behind that page there is a repetition of claim  
25 one, one of the asserted claims. That's on page 19.

## Plaintiff's Opening Statement

20

1 And then -- and you don't need to show this, Mr.  
2 Dyer. And then other claims that got added during  
3 the re-examination process that are in -- italicized.  
4 You can tell what got added because it's in italics.  
5 And that goes up through claims 113.

6 So that -- the new claims are from pages 19  
7 to page 23 of PX-2. And, as Judge Dubois said  
8 yesterday, we are -- Comcast is asserting claims one,  
9 seven, and 113. Okay. So I'm -- like I said, I'd  
10 like to walk through claim one. Mr. Dyer, can you  
11 pull of just the first paragraph of claim one?

12 (Pause in proceedings.)

13 MR. GOETTLE: So where I'm going to go with  
14 this, ladies and gentlemen, is I'm going to read it  
15 quickly to you, but I'm going to explain how what  
16 I've already told you is what's in the claim. So the  
17 preamble of the claim, the first paragraph of the  
18 claim, says, "A method for inquiring about  
19 information relating to a wireless terminal of a  
20 cellular network from the cellular network by a  
21 messaging server external to the cellular network  
22 wherein the method comprises." The evidence is going  
23 to show you, ladies and gentlemen, that what that is  
24 saying is you have a messaging server that's away,  
25 that's separate from the core network elements that

## Plaintiff's Opening Statement

21

1 are charged with the duty -- charged with the duty of  
2 speedily connecting phones to other phones, phones to  
3 other networks. You have a messaging server away  
4 from that. That's why there's a reference there to  
5 external messaging server. And that messaging server  
6 is attempting to get information about a phone.

7 Okay? That's the preamble in a nutshell.

8 Now we go through just a four step claim  
9 that are four steps that I've actually already walked  
10 through. The first step is sending an inquiry from  
11 the messaging server to the cellular network to  
12 determine said information relating to the terminal,  
13 the inquiry comprising a first identifier,  
14 identifying said terminal, the first identifier being  
15 a specific identifier external to the cellular  
16 network. That is a lot of words to get across a  
17 simply point, ladies and gentlemen. The evidence  
18 will show you that what that means is sending in an  
19 inquiry from this messaging server that's separate  
20 from the core functions, sending in an inquiry about  
21 a phone, the phone with the phone number.

22 So the messaging server is requesting  
23 information about a phone and it's ending in the  
24 phone number to get that information. That comes up  
25 with the part first identifier, identifying said

## Plaintiff's Opening Statement

22

1 terminal, the first identifier being a specific  
2 identifier external to the cellular network. The  
3 evidence is going to show you that that first  
4 identifier, that's the phone number.

5           Okay. Next step, mapping. Mapping said  
6 first identifier to a specific second identifier in  
7 the cellular network, the second identifier being an  
8 internal identifier of the cellular network. That's  
9 mapping the phone number to, for example, a serial  
10 number of a phone for whatever identifier the network  
11 uses to uniquely identify each phone. If it doesn't  
12 do -- if it doesn't store its information according  
13 to phone number, but uses, again, for example, the  
14 serial number of the phone or some other identifier,  
15 the cellular network, the components charged with the  
16 duty of fast connections, will do a mapping from the  
17 first identifier, the phone number, to a second  
18 identifier, an internal identifier used in the  
19 network.

20           The third step, determining said  
21 information relating to the terminal with the said --  
22 with the aid of said second identifier. The evidence  
23 will show you that means a database inside the  
24 network, and in this case Sprint's network, does a  
25 lookup in a database using the internal identifier.

## Plaintiff's Opening Statement

23

1 It will look up where is the phone? It's a cellular  
2 network. Phones move around. They're mobile. It  
3 needs to keep track of where is the phone?

4 Is the subscriber signed up to receive an  
5 SMS or an MMS message or any other kind of  
6 information that the messaging server might need or  
7 the cellular network needs to send a message through?  
8 That's going to be determined at the third step.

9 Then the last step is a long paragraph to  
10 get across a relatively straightforward point.  
11 Sending a response message in response to said  
12 inquiry from the cellular network to said messaging  
13 server external to the cellular network, in which  
14 response message the information relating to said  
15 terminal is indicated with the aid of said first  
16 identifier.

17 The evidence will show you, ladies and  
18 gentlemen, that that's a long way of saying -- of  
19 saying those components involved with fast  
20 connections ensuring speedy connections between the  
21 phone and other phones, the phone and other networks.  
22 They send back the information to the messaging  
23 server and the indicate the information they're  
24 sending back with the aid of, for example, the phone  
25 number. You asked me about questions -- you asked me

## Plaintiff's Opening Statement

24

1 about a phone that you need to send a message to.  
2 Here's the information you requested along with, for  
3 example, the phone number so that the messaging  
4 server knows oh, that's Bob's phone and I asked about  
5 Bob's phone and now I know this is the information  
6 about Bob's phone. It includes or needs to be --  
7 that information needs to be identified with the aid  
8 of that phone number.

9 Okay, so that's the claim. You'll notice  
10 in this claim that quite a few times I use the term  
11 "cellular network." It's in the claim. And  
12 yesterday, Judge Dubois told you that he has  
13 construed some claim terms, including "cellular  
14 network." What that means is the Court has -- Judge  
15 Dubois has looked at some of the claim terms in here  
16 and defined those terms in accordance with what is  
17 disclosed in this patent. That process, as he  
18 explained, is called construction. It's kind of like  
19 the definition of the claim term as that claim term  
20 is used in this patent. And, Mr. Dyer, can you pull  
21 up the claim constructions. And I think it's the  
22 second tab in your binder, you have all of the  
23 definitions, all of the constructions, that the Court  
24 has defined for us for this case. And can you blow  
25 up the cellular network?



## Plaintiff's Opening Statement

25

1 I'm only going to talk about one now.  
2 We're going to be talking about all of them as the  
3 evidence unfolds, but I'm going to talk about one now  
4 because I think it's the most important one in terms  
5 of the issues in this case. You might find this a  
6 little bit -- a little bit hard to believe, but we're  
7 actually going to be talking about what is Sprint's  
8 cellular network? What is Sprint's cellular network  
9 under this construction, under this 1999 patent?  
10 What constitutes Sprint's cellular network?

11 The evidence is going to show you what  
12 Sprint's cellular network is and what it is not,  
13 according to this 1999 patent. And where I'm going  
14 with this -- well, let me -- let me walk through it  
15 and then I'll explain. The Court has construed,  
16 defined for the purposes of this patent, has  
17 construed cellular network as having three main  
18 components. Number one -- and if you could highlight  
19 these as I go. Number one are wireless terminals.  
20 The Court has said that a cellular network must  
21 include wireless terminals in order to qualify as a  
22 cellular network under this patent. That makes sense  
23 because the whole purpose of a cellular network is to  
24 connect mobile phones cellularly -- and we will  
25 explain that that means -- connect mobile phones to

## Plaintiff's Opening Statement

26

1 other phones and to other networks. So the cellular  
2 network would, of course, include the wireless  
3 terminals, which is another name for the mobile  
4 phones -- the cellular phones.

5 Next, a cellular network has to include bay  
6 station systems. We don't need to belabor this  
7 point. Bay station systems are the cell antennas and  
8 specialized computer controllers that control those  
9 cellular antennas, cellular antennas, cell towers,  
10 the cell towers we see all over the place.

11 Then the last thing, which is the important  
12 part -- the last thing in the Court's -- well,  
13 they're all important parts, but for this case and  
14 for the issues that you're going to be asked to  
15 decide, the important part for this case is core  
16 network elements. So that's the third of the three  
17 boxes. We had wireless terminals, bay station  
18 systems, and now we have core network elements. And  
19 I want to point out two things -- two things that I  
20 think are very important for you to keep in mind as  
21 the evidence unfolds, and the evidence is going to  
22 show you this.

23 Number one, the Court did not -- did not  
24 define what core network elements are or are not.  
25 There's a long list of things that follow the phrase

## Plaintiff's Opening Statement

27

1 "core network elements" in the construction, but  
2 before that phrase, it says "may include." Instead  
3 of defining the term, the Court has left it to you to  
4 decide what are core network elements in Sprint's  
5 network, okay? And then the Court has gone on and  
6 said -- given a list of certain things that may or  
7 may not be core network elements in a cellular  
8 network. And it's going to be your task, one of your  
9 tasks, to decide what are Sprint's core network  
10 elements. That's point number one.

11 Point number two about core network  
12 elements is the word "core." The word "core" is in  
13 the phrase "core network elements." That's  
14 significant, ladies and gentlemen, because Sprint has  
15 a lot of components under its domain, and Sprint  
16 witnesses generically -- and you will here this in  
17 the case -- generically refer to Sprint's wireless  
18 network or wired network. The wireless network  
19 obviously is where we're focused. The wireless  
20 network has a lot of computers in it, a lot of  
21 different functions. You can get voicemail, you can  
22 do messaging, you can do a lot of things with  
23 Sprint's wireless network. That doesn't matter.

24 The evidence will show you that what  
25 matters is what are the components in Sprint's

## Plaintiff's Opening Statement

28

1 wireless network that are core network elements to  
2 Sprint's cellular network under this construction  
3 from a patent that was written in 1999? So Sprint  
4 has many computers, many different functions of  
5 network computers, computers that talk to each other,  
6 computers that talk directly to each other or  
7 indirectly to each other. That doesn't matter.

8           The evidence will show you, Comcast's case  
9 will show you, what's important is the word "core."  
10 The Court didn't define the word "core" and the Court  
11 instructed you yesterday that if a term is not  
12 defined, you are to apply its ordinary meaning. The  
13 ordinary meaning of the word "core" the evidence will  
14 show you is essential, essential network elements.  
15 So the question -- and the evidence will show you  
16 that the -- the answer to the question, but the  
17 question that you are being asked to answer is in  
18 Sprint's cellular network what are the elements that  
19 are core network elements to get the cellular network  
20 to work for its purpose? What are the core elements  
21 that you need to get the phone to talk to other  
22 phones? What are the core network elements? Which  
23 network elements do you need to get Sprint's cellular  
24 network to have the phone talk to other networks?  
25 Those are the elements that are core network

## Plaintiff's Opening Statement

29

1 elements. And the evidence will show you that  
2 Sprint's messaging servers, which is the last part of  
3 the -- of the claim construction, while the Court has  
4 said messaging servers may be core network elements  
5 under this patent in 1999, the question for you to  
6 answer is Sprint has messaging servers; are they core  
7 to the operation of the cellular network or are they  
8 not core?

9 If you find that Sprint's messaging servers  
10 are core to the cellular network, then you find no  
11 infringement, right? Because the claim requires that  
12 the messaging server be external to the cellular  
13 network. If you find, however, that -- from the  
14 evidence, in particular, the evidence that Comcast is  
15 submitting that you will find -- if the evidence  
16 shows -- excuse me, if the evidence shows you that  
17 Sprint's messaging servers are not core, are not  
18 essential to Sprint's cellular network, then that  
19 would mean that those messaging servers are not part  
20 of the cellular network, and, therefore, are external  
21 to the cellular network.

22 So what I want to flag on this is the  
23 evidence will show you that messaging is perhaps a  
24 core business. It is a -- for Sprint, it is a hugely  
25 profitable, hugely popular service that Sprint

## Plaintiff's Opening Statement

30

1 provides to its customers. It's a core business.  
2 It's important to Sprint. But the question for you  
3 is not to decide as a matter of business whether  
4 messaging is core, and, therefore, whether the  
5 messaging server is core. That's business. Whether  
6 someone would purchase a cell phone be -- make a  
7 decision on purchasing a cell phone or using Sprint  
8 depending on whether it offers text messaging, the  
9 evidence will show you that's a business decision.  
10 The question for you to decide is as a matter of the  
11 technology of this patent in 1999, whether Sprint's  
12 messaging servers constitute core network elements.

13 Okay. So I'm going to leave the patent  
14 now. Can you put up the Powerpoint, slide one? I  
15 have two more areas to cover and I will be much  
16 quicker on the other two areas to cover.

17 The first thing I'm going to talk about is  
18 why Comcast has this patent in the first place and  
19 then why Comcast is suing Sprint, and then I'm going  
20 to talk to you about the damages that we seek you to  
21 award Comcast for Sprint's use of the invention.

22 Okay. Why does Comcast have this patent?  
23 Ladies and gentlemen, we have seven witnesses to put  
24 on for you in our direct case, seven live witnesses,  
25 and the first three are shown up on the screen in the

## Plaintiff's Opening Statement

31

1 order that they will be presented to you.

2 Mr. Finnegan is a Comcast employee and what  
3 Mr. Finnegan is going to explain to you is that in  
4 2007, late 2007, he was hired by Comcast to develop a  
5 patent strategy at Comcast, okay? By 2007, Comcast  
6 was -- had grown very quickly from a mom and pop  
7 cable company to a leader and an innovator in the  
8 cable industry. And being a leader in a -- leader in  
9 an industry makes you a popular company for other  
10 people to talk to about their patents. Other people  
11 come to you -- the evidence will show you other  
12 people come to you with their patents and they say  
13 hey, we think you might be infringing our patents.  
14 And at that point in time, in 2007, Comcast did not  
15 have, as sophisticated as it was, sophisticated in  
16 the industry of the cable business, did not have a  
17 sophisticated patent strategy.

18 So Comcast hired Mr. Finnegan to come in  
19 and develop a patent strategy because that's what his  
20 background is in. And you'll hear evidence about  
21 what he did in terms of setting a strategy, but  
22 there's one part of the strategy that I'm going to  
23 touch on right now. That strategy is this. Mr.  
24 Finnegan came in with the knowledge that a common  
25 practice for companies like Comcast is to have a

## Plaintiff's Opening Statement

32

1 large patent portfolio, and here's why. When those  
2 other companies come to Comcast with their patents  
3 and they put them down on the table and they say  
4 you're going to -- you have a problem with our  
5 patents, you need to take a license to our patents,  
6 Mr. Finnegan's experience told him that the way you  
7 meet that is you open up your drawer, you pull out  
8 your patents, and you put them on the table next to  
9 the patents from the other party. And the reason you  
10 do that is you say look, you have patents and we have  
11 patents, but we don't want to be in the patent war  
12 business. We want to sell products, we want to sell  
13 services to customers, we want to compete in the  
14 marketplace. So you pull those patents out of your  
15 drawer, you put them on the table so that you can  
16 wipe the patents aside and deal with business issues  
17 as a matter of business.

18           You develop a patent portfolio for  
19 defensive purposes. When the other companies come to  
20 you on offense you play defense. You get out your  
21 patents, you put them up there, you say it's a wash,  
22 the patents are a wash. If we have a dispute, let's  
23 just deal with it as a matter of business, let's  
24 compete in the marketplace for customers as a matter  
25 of business. Let's not deal with patent litigation,



## Plaintiff's Opening Statement

33

1 let's not involve courts and involve juries and take  
2 people away from what they want to be doing to dis --  
3 to resolve business issues in litigation. That's  
4 what Mr. Finnegan is going to explain to you.

5 Mr. Dellinger was hired two and half -- in  
6 fact, Mr. Finnegan hired Mr. Dellinger, our second  
7 witness. Mr. Dellinger was specifically involved in  
8 purchasing the patent that's at issue in this case.  
9 Mr. Dellinger will explain to you that in 2008, he  
10 contacted Nokia, who he had dealt with at his  
11 previous jobs and brokered deals regarding Nokia  
12 patents. He contacted Nokia and asked Nokia if they  
13 would be willing to sell patents in the telecom  
14 space, and they were. And that started a negotiation  
15 that took about two and a half years and resulted in  
16 the buying of this patent and two other U.S. patents  
17 from Nokia, along with the foreign like European  
18 counterparts to the U.S. patents. But Comcast bought  
19 three patents, and Mr Dellinger is going to explain  
20 to you that when they bought the three patents Nokia  
21 asked for \$1.5 million for the three patents, and he  
22 was successful in negotiating, and Comcast bought the  
23 patent for \$600,000.

24 Mr. Marcus, our third witness, will  
25 testify, as I alluded to early, about re-examination.

## Plaintiff's Opening Statement

34

1 He will testify that after Comcast bought the patent,  
2 Comcast noticed that certain prior art patents,  
3 certain prior art publications, had not been  
4 considered by the Patent Office originally during  
5 prosecution during the original issuance of the  
6 patent. And what Mr. Marcus will tell you is that he  
7 sent those -- that -- this patent and that prior art  
8 back to the Patent Office and he said, Patent Office,  
9 we think this patent is still good, but we notice  
10 that you didn't consider this prior art. Can you  
11 please consider it and let us know what you think?

12 Mr. Marcus will explain to you that the  
13 Patent Office looked at that prior art and looked at  
14 the claims again and confirmed that the claims were  
15 patentable and agreed with Comcast that the patent  
16 was still good. Okay. Can you go to the next slide?

17 Okay. Our next two witnesses, we have Dr.  
18 Robert Akl and Dr. Jeffrey Dwoskin. They will be  
19 talking about Sprint and Sprint's infringement in  
20 this case. So now, after I've just talked to you  
21 about how Comcast buys patents for defensive  
22 purposes, now I'm going to talk to you about why we  
23 are suing Sprint for infringing this patent.

24 The evidence will show you -- in fact, I'm  
25 sorry, can you flip back a slide? The evidence will

## Plaintiff's Opening Statement

35

1 show you from the testimony of Mr. Finnegan that  
2 Sprint and Comcast were longtime partners. They  
3 bought and sold services of each other and they  
4 actually invested together in new technology. And as  
5 evidence of this, when Mr. Finnegan decided to go on  
6 this patent acquisition spree to go out and buy  
7 patents that it could then have in its drawer in case  
8 other competitors came to it, one of the first phone  
9 calls that Mr. Finnegan made was to Sprint. That's  
10 significant, ladies and gentlemen, because Mr.  
11 Finnegan will explain to you you don't go to just  
12 anybody to buy their patents. Once you pick up that  
13 phone and say hey, do you have any patents that  
14 would -- that you would be willing to sell us, well,  
15 if you don't go to the right person, they could hang  
16 up the phone from their end, start looking at their  
17 patents, and start thinking we're not going to sell  
18 these patents to the -- to the other party, we're  
19 going to accuse them of infringement. We're going to  
20 see if we can exact licensing fees for the use of our  
21 invention. So you have to be careful when you go  
22 about buying patents from other parties.

23 I told you Mr. Dellinger contacted Nokia.  
24 From his prior experience, he knew -- he knew  
25 Nokia -- for reasons that will be explained, he knew

## Plaintiff's Opening Statement

36

1 Nokia was willing to sell patents. And then based on  
2 the relationship between Comcast and Sprint, this  
3 longtime business partnership, Mr. Finnegan felt  
4 trusting enough of Sprint to go to Sprint and say  
5 will you sell us any patents?

6 January 1<sup>st</sup>, 2010 -- actually, I might be  
7 wrong on the actual day. January of 2010, Sprint  
8 called Comcast and told Comcast that Comcast was  
9 infringing Sprint patents, January of 2010. Sprint  
10 didn't sue right away, but then, eventually, Sprint  
11 sued Comcast for patent infringement.

12 MR. FINKELSON: Your Honor, objection, I'm  
13 not sure that there's any relevance to lawsuits that  
14 are not before this Court.

15 THE COURT: Overruled.

16 MR. GOETTLE: Eventually, Sprint sued  
17 Comcast for patent infringement in another court and  
18 that's what led to this countersuit, this  
19 counterclaim, against Sprint. And that's what brings  
20 us here today. That's why -- that I've explained to  
21 you of why Comcast has the patent, again, for  
22 defensive purposes, and why Comcast is suing Sprint.

23 Comcast wants to compete in the  
24 marketplace. That's what you're going to hear from  
25 these witnesses. Comcast doesn't want to compete in

## Plaintiff's Opening Statement

37

1 a courtroom in front of juries. Comcast wants to  
2 compete in the marketplace, but that's why Comcast is  
3 here today.

4 Okay. And the last thing that I want to  
5 touch on very briefly -- I'm almost done -- is  
6 damages. The -- Judge Dubois instructed you a little  
7 bit on damages yesterday and you're going to hear  
8 more instructions and you're going to hear testimony  
9 about this. Can you flip to the next slide?

10 What the law says is if a party is  
11 infringing a patent, the owner of that patent -- you  
12 know what, let me step back. I forgot to say one  
13 piece that I wanted to say because this might be a  
14 little bit foreign. Patents are property. They're  
15 like your house and they're like your car. Okay?  
16 You can buy and sell your house, you can buy and sell  
17 your car, and just -- and you can do that with  
18 patents too. So when you buy a patent, and the --  
19 and the evidence will show you in this case when  
20 Comcast bought this Nokia patent it paid Nokia for  
21 the right to sue for infringement, whether that  
22 infringement happened after the date that Comcast  
23 bought the patent in 2010 or before 2010. And that's  
24 the law and Comcast has the right to bring this  
25 lawsuit. This patent is Comcast's patent. Okay. I

## Plaintiff's Opening Statement

38

1 forgot to mention that and I wanted to make sure I  
2 mentioned that. And the evidence will show you that.

3 Back to damages, the law -- Judge Dubois  
4 instructed you on this earlier and you will be  
5 instructed on it again, that the law provides that  
6 Comcast, as the patent owner, is entitled to no  
7 less -- no less than a reasonable royalty for the use  
8 made of the invention by Sprint. Comcast is entitled  
9 to no less than a reasonable royalty for Sprint's use  
10 of the invention.

11 Ladies and gentlemen, Sprint's use of this  
12 invention since 2006 has resulted in 2.6 trillion --  
13 2.6 trillion text messages. All text messages,  
14 2.6 -- all 2.6 trillion of those messages involved  
15 using those four steps in the claim that I've  
16 already -- that I've read to you, 2.6 trillion. A  
17 trillion is 1,000 billion. So that's 2,600 billion  
18 acts of infringement of the patent just for text  
19 messaging. And then the evidence will show you  
20 there's another billion, more than a billion of the  
21 multi-media messaging acts of infringement. And  
22 Comcast, under the law, is to compensate Com -- or,  
23 excuse me, Sprint, under the law, is to compensate  
24 Comcast for Sprint's use made of the invention.

25 For that use made of the invention, Comcast

## Plaintiff's Opening Statement

39

1 is seeking a little bit more than \$153 million. And  
2 here's what I would like you to pay attention to  
3 during the expert testimony on damages. You're going  
4 to hear from Ms. Reilly and Mr. Weber, our last two  
5 witnesses. And what I would like you to pay  
6 attention to when you hear their analysis of Sprint's  
7 infringement, I would like you to pay attention to  
8 every time they had a choice to make in trying to  
9 determine Sprint's use made of the invention. Every  
10 time that those experts had a choice to make on some  
11 sort of range of values they could select on one end  
12 would be really good for Comcast, on the other end  
13 would be really good for Sprint, or somewhere in the  
14 middle, they always selected the Sprint number. They  
15 erred on the side of Sprint throughout their  
16 calculations every time. You will hear that in the  
17 evidence if you're listening for it. Every time they  
18 had a choice to make they went with Sprint. They  
19 made a conservative damages estimate of \$153 million.

20 That \$153 million, ladies and gentlemen,  
21 the evidence will show you amounts to a little bit  
22 more than five one-thousandths -- five one-  
23 thousandths of a penny for each infringing act, for  
24 each message sent, five -- a little bit more than  
25 five one-thousandths of a penny. And the evidence

## Plaintiff's Opening Statement

40

1 will show you that at least in the early days of  
2 Sprint offering SMS services, there were times where  
3 subscribers were paying as much as 15 pennies, 15  
4 cents per message. And what we are seeking is a  
5 little bit more than five one-thousandths of one of  
6 those pennies. It just so happens that when the use  
7 amounts to 2.6 trillion messages that number can  
8 get -- can get large quickly. \$153 million is a  
9 large number, but the use made of the invention, as  
10 these experts will disclose to you, warrants a  
11 damages award of that amount.

12 So I've concluded my opening statement. I  
13 very much appreciate your time. I submit to you that  
14 we heard you loud and clear yesterday. We will -- we  
15 will endeavor to put our evidence on as quickly and  
16 as concisely and as completely as we need to to make  
17 sure that you have the information you need to -- for  
18 your deliberations. Thank you.

19 THE COURT: Thank you, Mr. Goettle. We  
20 will now hear Sprint's opening statement.

21 MR. FINKELSON: Your Honor, I'm happy to  
22 proceed or we can take a short break just to organize  
23 and let everybody stretch their legs.

24 THE COURT: All right. It's a little  
25 early, but we can take a short break. Ten minute



Defendant's Opening Statement

41

1 break.

2 MR. FINKELSON: Thank you, Your Honor.

3 (Jury out, 10:41 a.m.)

4 THE COURT: We're in recess for ten  
5 minutes.

6 MR. HANGLEY: Thank you, Your Honor.

7 MR. FINKELSON: Thank you.

8 (Recess taken from 10:43 a.m. to 10:59  
9 a.m.)

10 THE COURT: Be seated, everyone. We will  
11 now hear from Sprint. Mr. Finkelson?

12 MR. FINKELSON: Thank you, Your Honor.

13 DEFENDANT'S OPENING STATEMENT

14 MR. FINKELSON: Good morning, ladies and  
15 gentlemen of the jury. My name is Dave Finkelson and  
16 it's my privilege to represent Sprint in this case.  
17 It's also my privilege to have the opportunity to  
18 speak with you.

19 We're here because Comcast Cable wants to  
20 make its move into the cell phone business. Comcast  
21 cable wants to expand into cellular and it wants you,  
22 this jury, to clear the way for that expansion by  
23 finding that a patent that Comcast bought from Nokia  
24 for \$600,000 gives Comcast control over the whole  
25 universe of SMS and MMS messaging, what you know as

## Defendant's Opening Statement

42

1 sending a text message on your phone or sending a  
2 picture.

3 Comcast wants you, this jury, to fund that  
4 expansion into cellular by giving it over \$153  
5 million and by taking that \$153 million from Sprint,  
6 a company that has been a pioneer in the cell phone  
7 business from the beginning.

8 The evidence in this case, ladies and  
9 gentlemen, is going to show you that Comcast itself  
10 doesn't actually use the 870 patent to provide SMS  
11 and MMS services to Comcast customers. Yet Comcast  
12 is going to ask you to find that every single time a  
13 Sprint subscriber sends a text message or a picture  
14 on his or her phone or even gets one, as we all do,  
15 that we don't want or weren't expecting, a little bit  
16 more money should go in Comcast's pocket. And that's  
17 what this case is about.

18 Now, you heard yesterday, ladies and  
19 gentlemen, in the video that a patent is like a deed  
20 to a piece of property. A patent has precise  
21 measurements. It has boundaries, boundaries that  
22 explain what the patent covers and how useful it is.

23 The Nokia 870 patent that Comcast purchased  
24 is no different. It too has boundaries, and the  
25 evidence is going to show you that it is not the keys

## Defendant's Opening Statement

43

1 to the whole cellular community. You're not going to  
2 hear any witness say to you in this trial that the  
3 Nokia 870 patent invented cell phones. It didn't.  
4 You're not going to hear any witness say to you in  
5 this trial that the 870 patent invented making a  
6 voice call on your telephone, surfing the internet  
7 for data, or sending and receiving messages. It  
8 didn't.

9 You're going to be listening over the  
10 coming days and what you're going to hear is that SMS  
11 messaging was around for a long time before the 870  
12 patent. The 870 patent didn't invent SMS messaging.  
13 You're also going to hear that the 870 patent didn't  
14 invent MMS messaging either. Other people did that.  
15 Patents have boundaries. And what you're going to  
16 hear is that the boundaries of the 870 patent, what  
17 Nokia invented in the 870 patent, is directed to a  
18 very specific, a very particular way of doing SMS and  
19 MMS messaging, and it is a very specific, a very  
20 particular way of doing SMS and MMS messaging that my  
21 client, Sprint, the defendant in this case, doesn't  
22 do.

23 Now, I'm going to be talking to you today.  
24 I'll give you a road map. I'm going to talk to you  
25 about three issues that you're going to be hearing

## Defendant's Opening Statement

44

1 about over the course of this case. The first issue  
2 and the first question for you is can Comcast meet  
3 its burden of proving that Sprint infringes the 870  
4 patent? The evidence is going to show you it cannot  
5 because Sprint doesn't infringe.

6 The second issue I'm going to be talking  
7 about is whether the 870 patent is valid, and the  
8 answer to that is it's not because another company in  
9 Europe came up with the same idea before Nokia did.

10 The third issue I'm going to talk to you  
11 about is Comcast's calculation of damages. Now,  
12 that's an issue that we think by the end of the case  
13 will not be one that you need to reach. But if you  
14 do, closely examine how that calculation is done.  
15 Closely examine how that calculation ignores the  
16 price at which Nokia actually sold the patent to  
17 Comcast, and how it's a profit-driven model that  
18 ignores all of the costs that go in to SMS and MMS  
19 messaging. So those are the three issues I'm going  
20 to cover.

21 I'm going to start with the issue of  
22 infringement, how does the Nokia 870 patent say to do  
23 SMS and MMS messaging, and how the evidence is going  
24 to show you that Sprint does just the opposite. Now,  
25 let me start with two words, and I wish they were a

## Defendant's Opening Statement

45

1 sexier two words than they are, but they're the words  
2 you're going to hear over and over and over in this  
3 case, and they are "messaging server," "messaging  
4 server." You heard them in Comcast's presentation.  
5 And the messaging server is very important to what  
6 the invention of the Nokia 870 patent is and to the  
7 issue of infringement that you must decide in this  
8 case.

9 I have two teenage daughters. There's a  
10 lot of texting going on in my house, unsurprisingly.  
11 So let me give you an example. My wife sends me a  
12 text. It says, "Honey, please pick up some milk on  
13 your way home from work." How does that text message  
14 get to me? The evidence is going to show you it gets  
15 to me by going through the messaging server. Picture  
16 a big cabinet like this with rows of computer  
17 equipment stacked on top of each other. That's the  
18 messaging server. And my wife's text message,  
19 "Please bring home some milk," it actually goes to  
20 the messaging server. It stores the message.

21 Then in a period of time that we don't  
22 recognize because we're so used to sending and  
23 receiving messages, the messaging server actually  
24 figures out whether I'm set up to receive text  
25 messages from my wife, which, of course, I am, where

## Defendant's Opening Statement

46

1 I am, and how that message can get to me. And then  
2 what the messaging server does is it routes my wife's  
3 text message to me. That's the messaging server.  
4 Without the messaging server there's no text message,  
5 and in my example, there's no milk in our house.

6 So why is the messaging server important to  
7 the issues that you have to decide in this case?  
8 Well, it's critical to the issues that you have to  
9 decide because the Nokia 870 patent says that the  
10 messaging server for SMS and MMS messaging must be in  
11 a particular location. It must be located outside of  
12 the cellular network. And you're going to see those  
13 words in a few minutes. They're in black and white  
14 in the 870 patent. The messaging server must be  
15 located external to the cellular network.

16 (Pause in proceedings.)

17 MR. FINKELSON: So the patent says that the  
18 messaging server has to be external to the cellular  
19 network, but the evidence is going to show you that  
20 that's not how it works at Sprint. Sprint witnesses  
21 will explain to you that Sprint is a cellular  
22 carrier. It owns and operates its messaging servers  
23 inside of its cellular network, in fact, what is  
24 known as inside of the core network of its cellular  
25 network, inside, not outside. Why inside? Because

## Defendant's Opening Statement

47

1 that is the most efficient way for Sprint to do it  
2 and that's what ensures the best quality of SMS and  
3 MMS messaging for Sprint cell phone customers across  
4 the United States.

5 That's what Sprint's witnesses will explain  
6 to you. How are you going to know whether to believe  
7 them or not? Well, that's also what you'll see from  
8 Sprint's technical documents that we show to you in  
9 this case. What do those technical documents say  
10 about the messaging servers? They describe them as  
11 being in network, they describe them as being  
12 internal, they describe them as being part of  
13 Sprint's core, they describe them as being located at  
14 Sprint's core sites, and they describe them as being  
15 fully-owned core network equipment. That's what the  
16 documents say.

17 You're going to also see in those Sprint  
18 technical documents that Sprint actually tried it the  
19 other way for a period of time for MMS. Sprint used  
20 to use a messaging server for MMS called Syniverse  
21 Picture Mail, Syniverse Picture Mail. And what that  
22 was was a messaging server that was fully owned and  
23 operated, posted and located externally by another  
24 company, a company named Syniverse. The messaging  
25 server didn't belong to Sprint. It was part of

## Defendant's Opening Statement

48

1 Syniverse's proprietary Picture Mail system.

2 Now, as His Honor is going to tell you in  
3 this case, you do not need to decide whether those  
4 Syniverse Picture Mail messaging servers infringe the  
5 870 patent. So why do I mention them? Why do I  
6 bring them up? Why are you going to be hearing about  
7 them during the course of this trial? Because  
8 you're -- if you're asking yourself what is an  
9 external messaging server? What does it look like?  
10 How am I going to know one when I actually see one?  
11 The Syniverse Picture Mail messaging servers, the  
12 evidence will show, were the classic example of what  
13 external messaging servers look like.

14 Picture dropping your clothes off at the  
15 laundromat instead of washing them in a washing  
16 machine that is in your own basement. That  
17 laundromat, that was Syniverse Picture Mail, outside  
18 of Sprint, external to Sprint's cellular network.  
19 And you're going to hear from Sprint's witnesses all  
20 of the problems that that external Syniverse Picture  
21 Mail messaging server caused and why Sprint stopped  
22 using them and why Sprint moved its MMS messaging  
23 servers inside the core network of its cellular  
24 network, just like its messaging servers for SMS  
25 messaging have always been.



## Defendant's Opening Statement

49

1           So for all of the messaging servers, ladies  
2 and gentlemen, that Comcast is asking you to decide  
3 on, the evidence in this case is going to show you  
4 that Sprint does not use the 870 patent because  
5 Sprint owns and operates those messaging servers  
6 inside the core network of Sprint's cellular network.

7           So where did the 870 patent's requirement  
8 of an external messaging server come from? What's  
9 the background you're going to hear? And you've  
10 heard me say it, but where are you going to see that  
11 language in the actual claims of the 870 patent?  
12 Well, Nokia, the original owner of this patent, is a  
13 company in Finland, and back in the 1990s, Nokia was  
14 active in an industry standard-setting group called  
15 the European Telecommunications Standards Institute.  
16 And the evidence will show you that back then, Nokia  
17 and the European industry standards group were  
18 working on a third generation of cellular networks in  
19 Europe. You'll hear terms like 3G and 4G. That's  
20 3G, third generation.

21           You're going to see acronyms, and they're  
22 already in your glossary, like GSM and GPRS. You're  
23 going to see those all over the Nokia 870 patent.  
24 When you see them just know that those are referring  
25 to the networks that came out of this European

## Defendant's Opening Statement

50

1 Standards Group. GSM and GPRS, that's the European  
2 Standards' way of doing things. And the evidence is  
3 going to show you that back in the early days, these  
4 European standards for these GSM, GPRS networks, they  
5 had a preference for putting the messaging equipment  
6 outside of the cellular network for reasons that the  
7 evidence is going to show you long ago became  
8 obsolete. And the 870 patent talks about that old  
9 school European preference. And here is the key,  
10 ladies and gentlemen. Here is the key. In the  
11 claims of the 870 patent, Nokia turned that old  
12 school European preference into a rule, into a  
13 requirement.

14 Now, on your screens is claim one of the  
15 Nokia 870 patent. You looked at it earlier this  
16 morning as well. This is one of the claims that  
17 Comcast must prove to you that Sprint infringes. And  
18 remember that the Judge told you yesterday that the  
19 claims of the patent are what set forth the clear and  
20 specific terms of the patent. The claims are where  
21 you need to focus in your analysis of infringement or  
22 no infringement.

23 Look first at the introduction to this  
24 claim. What is the claim about? It's about a way  
25 for a messaging server that is external to the

## Defendant's Opening Statement

51

1 cellular network -- again, not my words, the patent's  
2 words -- external to the cellular network to ask  
3 about information from the cellular network. That's  
4 what the claim is about.

5 Then look at what the messaging server has  
6 to do. The messaging server has to send an inquiry,  
7 a request, to the cellular network, from the external  
8 messaging server on the outside to the cellular  
9 network on the inside. And you see that in the  
10 portion of the claim that is highlighted on your  
11 screens in yellow.

12 Then what must happen to complete this  
13 process, the claimed process? And you see that in  
14 the last limitation of the claim. The cellular  
15 network sends a response to the messaging server that  
16 is external to the cellular network, external to the  
17 cellular network. Here, you see it, ladies and  
18 gentlemen, in black and in white and in a little bit  
19 of orange and yellow too.

20 Comcast can't dispute that this is what  
21 claim one requires. It also can't dispute that it is  
22 what the other claims at issue in the case require,  
23 claim seven and claim 113. And Dr. Akl, who is  
24 Comcast's expert in this case, won't disagree with  
25 that. He can't. To do SMS and MMS in the way that

## Defendant's Opening Statement

52

1 the 870 patent says, in the way based on Nokia's work  
2 in Europe, the messaging server must be put external  
3 to the cellular network. They must be outside to  
4 infringe. And there, ladies and gentlemen, is the  
5 problem for Comcast, because as you will learn from  
6 the evidence in this case, Sprint's third generation  
7 cellular network, its 3G, the one Comcast asked you  
8 to say infringes, it wasn't built in the European  
9 Standards' way. It's not a cellular network like the  
10 one Nokia and the European Standards Group came up  
11 with. It's not a cellular network built like the 870  
12 patent claims.

13           Instead, Sprint built its third generation  
14 cellular network in the United States according to a  
15 standard put out in the late 1990s by the American  
16 National Standards Institute. That standards group  
17 is called ANSI for short. Now, you already have a  
18 lot of acronyms in your notebooks, but this one is  
19 important and you may want to actually add it -- and  
20 I'd encourage you to do so -- to the glossary that  
21 you have behind tab three. ANSI, A-N-S-I-, it stands  
22 for American National Standards Institute.

23           (Pause in proceedings.)

24           MR. FINKELSON: Ladies and gentlemen, as  
25 you're going to see in the documents that Sprint

## Defendant's Opening Statement

53

1 presents to you, and as you're going to hear from  
2 Sprint's expert, Mr. Mark Lanning, a cellular network  
3 like Sprint's that is based on the American National  
4 Standards Institute blueprint doesn't work the same,  
5 doesn't look the same as a cellular network like the  
6 one that the claims of the Nokia 870 patent talks  
7 about. And one of the most important ways that it is  
8 different is when it comes to SMS and MMS messaging,  
9 and in particular, when it comes to the location of  
10 that critical piece of equipment, that messaging  
11 server that makes sure my wife's text message gets to  
12 me.

13 As Mr. Lanning will explain, the American  
14 Standard, the ANSI standard, A-N-S-I, recommends that  
15 a cellular carrier like Sprint put its messaging  
16 servers for providing messaging to its customers  
17 inside of its cellular network, inside, not outside.  
18 That's what the American standard recommends and  
19 that's what Sprint has done, American standard style  
20 inside of what is known as Sprint's CDMA 2000  
21 cellular network.

22 Now, you may be asking yourselves if your  
23 job is to decide whether Sprint's messaging servers  
24 are inside or outside of its cellular network, how do  
25 you know what the cellular network is? How do you

## Defendant's Opening Statement

54

1 know what a cellular network is so you can decide  
2 whether Sprint's messaging servers are inside of it  
3 or outside of it? Here's the good news. The good  
4 news is you have help. You have help. And that's  
5 because the Judge in this case has already defined  
6 "cellular network" for you.

7 I'd ask you please to take a look behind  
8 tab two of your binders. That's the Judge's  
9 definition of claim terms, and I'll give you a moment  
10 to find it. Take a look at the very first definition  
11 on that list. That's the Judge's definition of the  
12 term "cellular network" that you, ladies and  
13 gentlemen, are to apply in this case. And if you  
14 want to, put a star next to it. You heard Comcast  
15 talk about it this morning. It is one of the most  
16 important pieces of information you have in deciding  
17 this case. You've read it. Now I've had the  
18 opportunity to put it up on your screens. And I put  
19 a red box around the last three words. Those are the  
20 key words for you. Those are the key words for you?  
21 Why? Because the Judge in this case has already  
22 decided that a cellular network may include a  
23 messaging server. The Judge in this case has already  
24 decided that a messaging server may be one of the  
25 elements that is included in the core network of a

## Defendant's Opening Statement

55

1 cellular network.

2 In other words, ladies and gentlemen, a  
3 cellular carrier like Sprint, it doesn't have to do  
4 SMS and MMS how the 870 patent claims. You don't  
5 have to put the messaging server inside -- outside,  
6 rather, of the cellular network. You can do it a  
7 different way. And the evidence is going to show you  
8 that different way is the way Sprint does it, the  
9 American standards style way where the messaging  
10 server is part of the core of Sprint's cellular  
11 network. And Sprint's cellular network looks just  
12 like -- it looks just like the Court's definition on  
13 your screen.

14 Now, I'd like to draw you a picture -- Your  
15 Honor, do you mind, so I have a place to put this, if  
16 I just approach the witness box and lean this up  
17 there just for a couple of minutes while I make this  
18 drawing?

19 THE COURT: No, you may do that, but I want  
20 Comcast -- I don't want the whole team. The  
21 courtroom will tilt if the whole team moves.

22 MR. FINKELSON: Absolutely.

23 THE COURT: I want whoever -- I guess it  
24 would be you, Mr. Goettle, to position yourself so  
25 that you can see what's being done. And I would

Defendant's Opening Statement

56

1 suggest you might want to move over and stand  
2 somewhere in the area of the clock. Yes, Mr.  
3 Finkelson, you --

4 MR. FINKELSON: Thank you, Your Honor.

5 THE COURT: -- may proceed.

6 MR. FINKELSON: Mr. Goettle, if you can't  
7 see, just say the word.

8 THE COURT: We have --

9 MR. FINKELSON: Your Honor, I will turn it  
10 around so you can see it as well.

11 THE COURT: Michael, where is our easel?

12 MR. GOETTLE: We actually -- Your Honor, we  
13 actually have one we can set up.

14 MR. FINKELSON: I think I can sit it right  
15 here, Your Honor, and I'll be able to turn it to you.  
16 I'll just be up here for a moment.

17 THE COURT: All right.

18 MR. FINKELSON: You're going to -- you're  
19 going to find very shortly it's not going to be a  
20 very valuable piece of art. If my wife knew I was  
21 drawing --

22 THE COURT: All right. And we'll find the  
23 easel sometime over the noon recess.

24 MR. FINKELSON: Thank you, Your Honor.

25 THE COURT: Along with the real lectern.



## Defendant's Opening Statement

57

1 You may proceed.

2 MR. FINKELSON: Sprint's cellular network,  
3 it looks just like the Court's definition of  
4 "cellular network" that was on your screen.

5 (Pause in proceedings.)

6 MR. FINKELSON: Sprint's cellular network.

7 (Pause in proceedings.)

8 MR. FINKELSON: What does it have? What  
9 does it have in it? Just like the Court's definition  
10 of "cellular network" that's on your screens, it has  
11 what's known as wireless terminals. You know what  
12 wireless terminals are. Those are those things the  
13 Judge made you shut off before you entered the  
14 courtroom today. If mine goes off, I'm going to be  
15 in big trouble. Sprint's cellular network has  
16 wireless terminals. It has phones. In fact, it has  
17 lots of them.

18 How do those wireless terminals communicate  
19 within Sprint's cellular network? Well, they  
20 communicate through what are known as bay station  
21 systems. And those bay stations systems, those are  
22 just those towers that you see as you drive down the  
23 street. Those are bay station systems just like you  
24 see in the Court's definition of "cellular network,"  
25 bay station systems.

## Defendant's Opening Statement

58

1           How do the phones communicate within  
2     Sprint's cellular network? They communicate through  
3     core network elements that are responsible for  
4     routing communications within that cellular network.  
5     And just like the Court's definition of "cellular  
6     network" that's on your screen, Sprint's cellular  
7     network has what is called a core network. As you're  
8     going to hear during the course of this case, that  
9     core network has a lot of equipment in it. But some  
10    of the pieces of equipment that it has in it, the  
11    ones that are relevant to you, are first, what you  
12    see on your screen in the Court's definition of  
13    "cellular network," mobile switching centers,  
14    switches.

15           Sprint's cellular network also has what is  
16    known as packet switching nodes. Acronym soup, and  
17    you don't have to remember the acronyms, it's a  
18    packet switching node, but a Sprint, it's called a  
19    PDSN. And just like the Court's definition of  
20    "cellular network" that's on your screen, Sprint's  
21    core network of its cellular network also has what  
22    are known as subscriber databases, subscriber  
23    databases. One of those is known as an HLR. And if  
24    you're drawing the core network of Sprint's cellular  
25    network correctly and the right way, one of those

## Defendant's Opening Statement

59

1 elements, one of those subscriber databases, is also  
2 known as an SPS. That's something you're going to  
3 hear about in this case as well, Sprint's SPS  
4 database.

5 Now, you're asking where are those  
6 messaging servers he's talking about? Where are  
7 those messaging servers that you're going to hear  
8 about for the coming days. Those messaging servers,  
9 the evidence is going to show, are in the core  
10 network of Sprint's cellular network as well, just as  
11 the Court's definition of "cellular network" on your  
12 screen says it can be.

13 (Pause in proceedings.)

14 MR. FINKELSON: Messaging servers. What  
15 are they called. What are these messaging servers  
16 called? Well, if you're sending a text message,  
17 they're known as short message service centers, short  
18 message service centers, sometimes abbreviated as  
19 SMSCs. And for MMS, as you might expect, it's an  
20 MMSC. That's what the messaging servers are.

21 These messaging servers at Sprint are  
22 located in Sprint's most secure facility. What are  
23 those facilities called? They're called core sites.  
24 They're called core sites. And what else is at those  
25 core sites? These SPS databases. They're in the

## Defendant's Opening Statement

60

1 same building, in the same facility, in the same core  
2 site, as the messaging servers. But you're actually  
3 going to hear from Comcast's expert in this case, Dr.  
4 Akl. He is going to tell you that these SPS  
5 databases, they're a part of Sprint's core network,  
6 but these messaging servers that are sitting there in  
7 the same building, in the same facility, that are  
8 responsible for making routing decisions, to send an  
9 SMS or MMS message from this phone to that phone,  
10 he's going to tell you that they are not part of  
11 Sprint's core network. In fact, Comcast is going to  
12 tell you that these messaging servers are somewhere  
13 outside of Sprint's cellular network altogether.

14 This is the Sprint cellular network that  
15 Comcast is accusing in this case. These are the  
16 messaging servers that Comcast is going to tell you  
17 are external. Your Honor, just so you have the  
18 pleasure of my fine drawing talent.

19 THE COURT: Thank you. I think we ought to  
20 mark that. And I don't know whether it's been  
21 pre-marked.

22 MR. FINKELSON: It hasn't been pre-marked  
23 just because I --

24 THE COURT: Just created it.

25 MR. FINKELSON: -- drew it on the fly.

Defendant's Opening Statement

61

1 THE COURT: Mark it.

2 MR. FINKELSON: Bad Drawing Number 1.

3 THE COURT: Fine. Sprint Drawing Number 1.

4 MR. FINKELSON: Thank you, Your Honor.

5 (Pause in proceedings.)

6 MR. FINKELSON: Again, Comcast expert,  
7 through Dr. Akl, is going to tell you that those  
8 messaging servers I just drew for you are external.  
9 But that's not what the evidence is going to show.  
10 And, ladies and gentlemen, that is also not what  
11 Comcast itself said outside of this courtroom before  
12 it brought this lawsuit, before it hired Dr. Akl.

13 The evidence is going to show you, ladies  
14 and gentlemen, that in 2008 -- in 2008, during the  
15 very time period that Comcast accuses of infringement  
16 in this case, Comcast entered into a contract with  
17 Sprint -- a contract with Sprint, and you're looking  
18 at that contract on your screens.

19 As you're going to hear, Comcast was  
20 interested in marketing Sprint's cellular network  
21 services, like voice and data and messaging, to  
22 Comcast's own customers under the Comcast brand.  
23 Essentially, what the evidence is going to show you  
24 is Comcast wanted to lease Sprint's cellular network  
25 for that purpose. And because Comcast wanted to

## Defendant's Opening Statement

62

1    lease Sprint's cellular network, the evidence will  
2    show, and it's not going to surprise you, that it was  
3    pretty darn important for the parties to accurately  
4    define the technical meaning of Sprint's core network  
5    in that contract. In fact, the evidence is going to  
6    show that that's what the wheel turned on, the  
7    technical accuracy of how "core network" was defined.  
8    And, in fact, as you're going to hear the question  
9    that was on the table then between Sprint and Comcast  
10   were the very same questions that you're being asked  
11   to answer now. What is in the core network of  
12   Sprint's cellular network, and are Sprint's messaging  
13   servers for SMS messaging inside or not? The  
14   evidence is going to show you, ladies and gentlemen,  
15   that Comcast, these same people, Comcast, they  
16   answered those questions accurately and unambiguously  
17   in this contract -- accurately and unambiguously, and  
18   in a way that you should keep in the front of your  
19   mind as you listen to Comcast present its case  
20   through Dr. Akl in the coming days.

21            Here, ladies and gentlemen, are Comcast's  
22   own answers to those questions. This contract had a  
23   set of operative terms. This contract had a set of  
24   definitions. And the first question that this  
25   contract asked and answered in those operative terms,

## Defendant's Opening Statement

63

1 the evidence will show, is what is Sprint's core  
2 network? Here is what Comcast itself agreed to in  
3 2008 during the very same time period that it's  
4 accusing in this case about the very same equipment  
5 that it is accusing in this case. Comcast said that  
6 "core network," it doesn't just mean voice, it  
7 doesn't just mean voice and data. Comcast said that  
8 "core network" means the wireless voice, SMS, and  
9 data service infrastructure that provides  
10 connectivity and transmission via the Sprint network.  
11 Voice, SMS, and data service infrastructure,  
12 Comcast's own words.

13 What does SMS mean? What is the SMS  
14 infrastructure that is part of Sprint's core network?  
15 Here's what Comcast said it was back then before it  
16 brought this lawsuit. It said that SMS is messages  
17 using Sprint's short message gateway and Sprint's  
18 short message service center. Remember my drawing.  
19 Those messaging servers for SMS, what did I tell you  
20 that they're called? What's the evidence going to  
21 show you? They're called short message service  
22 centers, or SMSCs. That's exactly what this contract  
23 is talking about. Sprint's short message service  
24 center is inside the core network.

25 The evidence is going to show you that

## Defendant's Opening Statement

64

1 these short message service center, these SMSCs that  
2 this contract is talking about, are the very same  
3 messaging servers that Comcast accuses of  
4 infringement in this case, the exact same ones that  
5 Dr. Akl is about to tell you in the coming days are  
6 external to Sprint's core network.

7 Comcast gave its word on these definitions.  
8 It gave its word in this contract. Here is its  
9 signature on the page. There's Sprint's signature,  
10 there's Comcast's signature. In 2008, ladies and  
11 gentlemen, Comcast answered the question by saying  
12 Sprint's messaging servers are inside, the same  
13 answer Sprint will be proving to you through the  
14 evidence presented to you in this case.

15 So where does that all leave you on the  
16 question of infringement? As the Judge has already  
17 instructed, for Comcast to prove infringement to you,  
18 it must show that Com -- that Sprint practices, and  
19 here are the key words, practices each and every --  
20 each and every limitation of a claim of the 870  
21 patent. That's what you heard from His Honor  
22 yesterday, each and every limitation.

23 Now, if you haven't figured it out already,  
24 you're going to figure it out very soon. Patent  
25 lawyers love to make things sound much more



## Defendant's Opening Statement

65

1 complicated than they are, so we word -- we used word  
2 like "limitation." All a limitation is is a required  
3 ingredient, a required ingredient. That's what  
4 limitation means. And "each and every" means for  
5 Comcast that two out of four of those ingredients  
6 doesn't cut it, three out of four of those  
7 ingredients doesn't cut it. In order to prove Sprint  
8 infringes, it must prove that Sprint practices, that  
9 Sprint does, each and every ingredient that's set  
10 forth in the claim. That's what Comcast needs to do  
11 to meet its burden of proof to you. And if Sprint  
12 doesn't have one of those ingredients, then Comcast  
13 can't prevail because that means that Sprint is not  
14 using Comcast's property.

15 Remember, ladies and gentlemen, as you hear  
16 the evidence, remember what the 870 patent claim  
17 requires. The evidence will show that Sprint does  
18 not do what is on your screens, that Sprint's  
19 messaging servers are inside of its core cellular  
20 network, not external, and that even Comcast, as I  
21 just showed you, has admitted it. Inside, not  
22 outside, and that means no infringement.

23 That's the issue of infringement. But  
24 Comcast has a second problem, ladies and gentlemen,  
25 that is also yours to decide, that that's called

## Defendant's Opening Statement

66

1    invalidity and that's what I want to turn to next.  
2    But before I do, want to take a moment to introduce  
3    you to some of the people that you'll be seeing and  
4    hearing from over the course of this case. I'm not  
5    going to ask you if the feeling is mutual. I know  
6    the answer. But I can tell you that we're looking  
7    forward to spending the coming days to you and  
8    presenting the evidence to you during the course of  
9    this trial, and I want to say on behalf of all of our  
10   team and, frankly, on behalf of all of Comcast's team  
11   as well, how much we appreciate your service as  
12   jurors.

13            First, let me introduce my client  
14   representative who is here for us during the course  
15   of the trial, Mr. Scott Kalinoski. You see him here  
16   at the table. Mr. Kalinoski is a vice president at  
17   Sprint, and you're going to hear directly from him  
18   when it's our turn to present our case to you. Mr.  
19   Kalinoski was actually at the table with Comcast in  
20   2008 when Comcast agreed in that contract I just  
21   showed you that Sprint's SMS messaging servers are  
22   part of the core network of Sprint's cellular  
23   network. Thanks, Mr. Kalinoski.

24            Also, the lawyers who are at the table with  
25   me, Brian Riopelle, my law firm colleague, who will

## Defendant's Opening Statement

67

1 be appearing before you during the course of this  
2 trial, and also, Colleen Simpson, our colleague from  
3 here in Philadelphia, who you'll also be hearing  
4 from. And then some of the other members of our team  
5 who are here, Mr. Noah Baird is hiding behind me.  
6 He's the one whose job it is to make sure that the  
7 graphics you see on the screen look much prettier and  
8 better than the one I just drew for you. And also, a  
9 number of the members of my firm are here, Chad  
10 Bebout,, Meghan Rachford. These are the people  
11 staying up to all hours behind the scenes to make  
12 sure that this runs smoothly. Their counterparts are  
13 on the Comcast side as well and they all deserve a  
14 lot of credit for helping us put this case together  
15 for you.

16 We also have several experts who are going  
17 to join us over the course of the trial, and two of  
18 them are here today. I want to introduce you to them  
19 in person. The first is Mr. Mark Lanning. The  
20 evidence is going to show that Mr. Lanning has been  
21 immersed in the telecommunications field since the  
22 1970s. Before he even went to college, he joined the  
23 Army and was responsible for encrypted voice and data  
24 communications worldwide for the Army and for the  
25 U.S. government as part of the Army Signal Corps.

## Defendant's Opening Statement

68

1 And after he got his college degree in computer  
2 science, Mr. Lanning was actually on the ground floor  
3 himself actually designing cellular networks and  
4 actually implementing messaging server components  
5 that go into the cellular networks. He did it  
6 himself. And Mr. Lanning will walk you step by step  
7 through his analysis of Sprint's messaging servers  
8 and his opinion that Sprint's messaging servers are  
9 inside of Sprint's cellular network, not external, as  
10 the 870 patent requires, and that Sprint does not  
11 infringe the 870 patent for that reason.

12 Let me also introduce Dr. Nathaniel Polish  
13 who is with us. Dr. Polish has a Ph.D. in Computer  
14 Science from Colombia University where he is  
15 currently a senior research scientist. And back  
16 around the time of this patent, Dr. Polish started  
17 his own company involving SMS messaging. And Dr.  
18 Polish, when it's our turn, will walk you through his  
19 opinion that the Nokia 870 patent is invalid, that  
20 it's not entitled to protection, because another  
21 company in Europe came up with Nokia's idea first.

22 So let's talk about that some more. As you  
23 heard in the video, Comcast has the burden to prove  
24 to you that Sprint infringes. That's Comcast's  
25 burden. But when it comes to invalidity, the burden

## Defendant's Opening Statement

69

1 is on us. It's Sprint's burden to show you -- to  
2 prove to you that the claims of the 870 patent are  
3 invalid and we need to show you that by what's known  
4 as clear and convincing evidence.

5 Now, we don't get to put on our case on  
6 invalidity until Comcast goes first. But when we do  
7 you will see and you will hear that Nokia wasn't the  
8 only company in Europe thinking back in 1999 about  
9 how to deal with messaging in a network that was  
10 based on the European standards, again, not the  
11 American standards, like Sprint's cellular network,  
12 but on networks like the European standards networks,  
13 those GSM and GPRS style networks that I talked to  
14 you about earlier and that you'll see referenced all  
15 over the 870 patent.

16 The evidence is going to show you that  
17 another telecommunications company in Europe, in  
18 fact, in Finland, was working on the same exact  
19 thing, and that company was named Sonera, S-O-N-E-R-  
20 A, Sonera. And in June 1999, several months before  
21 the Nokia 870 patent application was filed -- several  
22 months before the Nokia 870 patent application was  
23 filed, Sonera itself published an international  
24 patent application on the same GSM, GPRS-based idea  
25 that Nokia didn't come up with until later in 1999.

## Defendant's Opening Statement

70

1 And this earlier Sonera patent application was made  
2 available for people skilled in the field to read.  
3 In fact, the evidence is going to show you that the  
4 Sonera patent application was published by what is  
5 known as the World Intellectual Property  
6 Organization. And you're going to hear from the  
7 evidence that when it comes to whether a U.S. patent  
8 is valid, a foreign patent application may be just as  
9 relevant, in fact, in this case more so, as a U.S.  
10 patent application is.

11 So Dr. Polish is going to walk you through  
12 the published Sonera application step by step. And  
13 what he is going to explain is that the Sonera patent  
14 application, it was in the very same field as the 870  
15 patent, text messaging in a cellular network. And,  
16 in fact, the Sonera patent application had the same  
17 focus on those European GSM, GPRS-based networks as  
18 the Nokia 870 patent has. And Dr. Polish will help  
19 show you that the Sonera patent application, it was  
20 confronting the very same problem as the 870 patent  
21 was trying to confront, that is if you have an  
22 external messaging server in one of these European  
23 style GSM, GPRS networks, how do you get information  
24 to it?

25 Finally, Dr. Polish will explain to you,

## Defendant's Opening Statement

71

1 and he's going to show it to you in Sonera itself and  
2 in the claims, he's going to explain that Sonera  
3 solved that same problem in the very same way as the  
4 Nokia 870 patent does, by mapping two different  
5 numbers, two different identifiers, together to  
6 determine the information that the messaging server  
7 needs.

8 Now, in formal terms, the word is  
9 "anticipation." You heard it yesterday. The  
10 evidence in this case will show that Sonera  
11 anticipates the 870 patent because it has each and  
12 every element that the 870 patent claims have. And  
13 that means that the 870 patent is invalid because  
14 Sonera came up with the very same idea first.

15 Dr. Polish is also going to explain to you  
16 the related concept of how a patent can be invalid  
17 for what is called obviousness -- obviousness, and  
18 why the 870 patent is also invalid in light of -- is  
19 also obvious in light of Sonera and other information  
20 that was known by people skilled in this field before  
21 the 870 patent application was filed in 1999.

22 Now, you may be asking yourselves how can  
23 you, this jury, get passed the fact that the Nokia  
24 870 patent has already said -- I'm sorry, that the  
25 U.S. government has already said that the Nokia 870

## Defendant's Opening Statement

72

1 patent is valid? How can you get past that fact?  
2 How can you reach a different conclusion than the  
3 government has reached?

4 First, it's important to remember you've  
5 got to keep the issues of infringement and invalidity  
6 separate. The Patent Office doesn't get involved in  
7 questions of infringement at all -- at all.  
8 Infringement is only for courts and for juries, like  
9 you, to decide. And the Patent Office has not said  
10 anything about infringement in this case, and you  
11 won't hear anything to the contrary. The Patent  
12 Office doesn't get involved in issues of  
13 infringement. But questions of validity are  
14 different.

15 Every patent that issues does go through  
16 government review at the Patent Office for validity,  
17 and the Nokia 870 patent did as well, and as you've  
18 heard, it also went through a re-examination brought  
19 by Comcast. But remember, as you heard in the patent  
20 video, the question of whether a patent is valid or  
21 not does not end at the government's doorstep. It  
22 ends with you. It ends with you. And that's for  
23 very good reasons that the video itself described.

24 One reason that you, the jury, have the  
25 ability and the power to decide whether a patent is



## Defendant's Opening Statement

73

1 valid, whether the 870 patent is valid in this case,  
2 is because sometimes there are facts or arguments  
3 that the patent office did not consider, did not have  
4 the chance to consider, because the most relevant  
5 information was not provided to the government.

6 Here, in this case the evidence is going to  
7 show you that when the government considered whether  
8 the 870 patent is valid, both the first time around  
9 and when Comcast brought the re-examination, the  
10 government did not have the benefit of considering  
11 the Sonera patent application. We have a written  
12 record of what happened at the Patent Office. We're  
13 going to show it to you. You're going to see it.  
14 And the written record shows that the examiner,  
15 that's the individual at the Patent office who  
16 considers a patent application, was not aware of and  
17 did not consider Sonera when Nokia originally filed  
18 the patent application. And the written record shows  
19 that when Comcast -- when Comcast filed its own  
20 re-examination of the 870 patent after Comcast bought  
21 it, Comcast chose the information they gave the  
22 government to consider. Comcast chose it. And that  
23 information, again, did not include Sonera. You,  
24 ladies and gentlemen, are the very first people to  
25 look at the Sonera patent application and compare it

## Defendant's Opening Statement

74

1 to the claims of the 870 patent. You're the first  
2 ones to do it.

3 Now, another reason you have the ability  
4 and the power to decide whether the 870 patent is  
5 valid is because when the Patent Office makes its  
6 own -- its decision it only has the chance to  
7 consider one side of the story. The evidence will  
8 show that Comcast filed the re-examination itself.  
9 It's what's called an ex parte re-examination, and  
10 all that means is that the other side isn't there.

11 Comcast was the only party that got to  
12 participate in the government re-examination of the  
13 870 patent, not Sprint. Well, here in this court  
14 it's not ex parte. Sprint is here too. And you, the  
15 jury, will be the first to hear both sides of the  
16 story regarding whether the 870 patent is valid and  
17 decide which you believe.

18 Let me end very briefly with Comcast's  
19 request for damages. At the end of this case Comcast  
20 is going to ask you to give it over \$153 million,  
21 over \$153 million on a patent that the evidence is  
22 going to show Nokia valued and sold to Comcast in  
23 2010 as part of a package of patents for a grand  
24 total of \$600,000. In fact, you've already heard  
25 this morning that Nokia's opening offer, it's home

## Defendant's Opening Statement

75

1 run scenario, for selling the 870 patent was \$1.5  
2 million. But Comcast expert, Ms. Reilly, is going to  
3 tell you in this case that had Sprint been at that  
4 negotiation table with Nokia, Nokia would have  
5 charged Sprint over \$153 million, not even to buy the  
6 patent, just to use it, just to rent it, and that  
7 Sprint would have agreed to that number. Just think  
8 about that.

9 Sprint will present testimony to you from  
10 not one, but two Ph.D. economists who will take you  
11 through the many ways that Ms. Reilly has gotten it  
12 wrong, including by failing to account for the  
13 purchase price of the 870 patent, and by failing to  
14 account for the vast majority of Sprint's costs in  
15 providing messaging service. They're going to ask  
16 you for over \$153 million, ladies and gentlemen, on a  
17 patent that Comcast does not itself use to provide  
18 SMS or MMS to its customers, over \$150 million on a  
19 patent covering a European standards-based idea, as  
20 we've just talked about, the evidence is going to  
21 show you Nokia wasn't even the first European company  
22 to conceive of. Sonera came first.

23 Then back to where we started today, on a  
24 patent that the evidence will show applies to one  
25 particular way of doing SMS messaging, a patent that

## Defendant's Opening Statement

76

1 claims that the messaging server must be, has to be,  
2 external to the cellular network, a patent that the  
3 evidence is going to show you, ladies and gentlemen,  
4 Sprint doesn't use. Why? Because it has installed  
5 its messaging servers inside the core of Sprint's  
6 American standards-based cellular network, not  
7 outside of it. Sprint's messaging servers are  
8 inside. They're not outside. And if you agree that  
9 that's what the evidence shows, that's it. Outside  
10 is what the patent requires. Inside equals no  
11 infringement.

12 The evidence will show you, ladies and  
13 gentlemen, that Comcast is not entitled to any  
14 payment at all from Sprint for the messaging servers  
15 that Sprint has installed inside the core network of  
16 its cellular network to provide SMS and MMS messaging  
17 to Sprint's customers, no payment at all. And when  
18 we're all done here and we stand before you at the  
19 end of this trial and at the conclusion of the  
20 evidence that is the verdict that Sprint will ask  
21 you, the jury, to reach.

22 Again, thank you for listening, thank you  
23 for your time this morning, and thank you on behalf  
24 of all of us for your service.

25 THE COURT: Thank you, Mr. Finkelson.

1 MR. FINKELSON: Thank you, Your Honor.

2 THE COURT: I think what we'll do, we'll  
3 all stand up before we proceed with the first of the  
4 Comcast witnesses. Let's stand up and kind of  
5 stretch.

6 (Pause in proceedings.)

7 THE COURT: Who is going to examine the  
8 first witness?

9 MR. HANGLEY: I am, Your Honor.

10 THE COURT: All right, Mr. Hangley.

11 MR. HANGLEY: William Hangley.

12 THE COURT: Yes.

13 (Pause in proceedings.)

14 THE COURT: I do this -- I borrowed it from  
15 a movie that some of you might have seen. The movie  
16 is Crocodile Dundee. He went for walkabouts.  
17 Instead of walkabouts to clear the head, we do  
18 standups. And if I see you kind of looking at the  
19 lights or not paying attention, we're going to do  
20 more of these. The information you're going to be  
21 receiving is, at least in some instances, a little  
22 difficult to receive and to comprehend. So we'll  
23 take frequent standups just to make sure you're on  
24 track. But I watched you during the openings and you  
25 were paying rapt attention, which is exactly what

1     you're supposed to do.

2                 Now we're going to sit down and Mr. Hangley  
3     will present his first witness.

4                 MR. RIOPELLE: Your Honor, as he's calling  
5     the first -- before he calls his first witness, can  
6     we meet at sidebar for a quick second?

7                 THE COURT: Yes.

8                 (Sidebar discussion as follows.)

9                 MR. RIOPELLE: Assuming that he's calling  
10    Mr. Finnegan and Mr. Finnegan is going to testify  
11    about the patent acquisition policy, you had asked me  
12    to prepare a limiting instruction in the hearing we  
13    had last week, and here's the transcript. And so I  
14    have a proposed limiting instruction, and there's a  
15    copy for these guys.

16                THE COURT: I have not been shown this.

17                MR. RIOPELLE: Yeah. I tried to track the  
18    language that you used in the hearing last week.

19                (Pause in proceedings.)

20                THE COURT: I don't think this is  
21    appropriate at all.

22                MR. HANGLEY: Thank you, Your Honor.

23                MR. RIOPELLE: Oh, you -- I'm sure you  
24    participated in the drafting.

25                THE COURT: I imagine Mr. Goettle would

1     like that.

2                 MR. GOETTLE:  Oh, I can --

3                 MR. RIOPELLE:  Why don't you share that?

4     And this is what you said in the transcript last  
5     week.

6                 (Pause in proceedings.)

7                 THE COURT:  At that time I was focused on  
8     the graveling of your motion, which was to exclude  
9     evidence relating to the value of patents in general  
10    because we had already ruled on the -- and excluded  
11    the -- any evidence on the value of the 870 patent,  
12    or at least what Comcast thought of the value of the  
13    870 patent.  And I was also concerned at the time of  
14    this hearing on January 25<sup>th</sup> with the testimony of  
15    Mr. Finnegan that the acquisition policy called for  
16    the obtaining of high value patents and litigation  
17    worthy patents.

18                MR. HANGLEY:  Which he is not going to do.

19                THE COURT:  Well, I'm not going to give  
20    this limiting instruction now.  I don't know that  
21    there will be a need for it.  Certainly, it's in the  
22    case, but I think he's going to argue and present  
23    evidence that Comcast is a patent investor.  In any  
24    event, I see no problem with Comcast's evidence of  
25    its patent acquisition policy as long as it doesn't

1 get into issues relating to the value of patents to  
2 be acquired and the litigation worthiness of patents  
3 to be acquired. And the reason for that  
4 limitation -- there would be no such limitation had  
5 Comcast not imposed the attorney-client privilege and  
6 the work-product privilege. That's the only reason  
7 Comcast is not permitted to offer evidence in those  
8 two categories. So I'm not going to give it now.  
9 I'll keep this.

10 MR. RIOPELLE: Okay, that's fine.

11 THE COURT: And if the need --

12 MR. HANGLEY: Thank you, Your Honor.

13 THE COURT: Well, just a moment. If the  
14 need arises, bring it to my attention.

15 MR. RIOPELLE: Thank you, Your Honor.

16 (Sidebar discussion concludes.)

17 MR. HANGLEY: Comcast calls James Finnegan.

18 (Pause in proceedings.)

19 JAMES FINNEGAN, Plaintiff's Witness, Sworn.

20 COURTROOM DEPUTY: Please be seated.

21 Please state your full name and spell it for the  
22 record, please.

23 THE WITNESS: Sure.

24 THE COURT: Good morning, Mr. Finnegan. I  
25 want to be sure the juror in the 6 seat can see Mr.



Mr. Finnegan - Direct

81

1 Finnegan, and she can. Yes.

2 THE WITNESS: Yes, good morning. My name  
3 is James Finnegan, J-A-M-E-S F-I-N-N-E-G-A-N.

4 THE COURT: You may proceed.

5 DIRECT EXAMINATION

6 BY MR. HANGLEY:

7 Q Mr. Finnegan, by whom are you employed?

8 A I work for Comcast.

9 Q And what is your title at Comcast?

10 A Sure, my title is Vice President, Strategic  
11 Intellectual Property.

12 Q Mr. Finnegan, where is the office of Comcast that  
13 you work at?

14 A The office of Comcast is downtown in  
15 Philadelphia, 1700 JFK Boulevard.

16 Q Okay. That's the huge building?

17 A That's the -- yeah, the tall building. We're  
18 also building a second building next door, 1800 Arch  
19 Street. That's our new Comcast Technology Center.

20 Q Now, sir, tell me your educational background.

21 A Sure, I graduated in 1985 from Lehigh University  
22 in Bethlehem, PA with a Bachelor's of Science Degree  
23 in Electrical Engineering. And then after I began  
24 working, I went to school at night and received a  
25 Master's of Science Degree in Electrical Engineering

Mr. Finnegan - Direct

82

1 in 1990. And in 1993, I received a Master's -- I'm  
2 sorry, an M.B.A., also at Lehigh University.

3 Q Where were you born, sir?

4 A I was born here in Philadelphia at Temple  
5 University Hospital.

6 Q And for the benefit of the jury, where do you  
7 live?

8 A I live in Allentown, Pennsylvania.

9 Q And do you commute to Philadelphia everyday?

10 A Yes, I do. I commute to Philadelphia.

11 Q Tell us a little bit, sir, about how it is that  
12 you come to be an Allentown resident commuting to  
13 Philadelphia.

14 A Well, sure. After I began work, I worked in  
15 Allentown for AT&T in their semiconductor factory as  
16 a factory engineer. I was a production engineer.  
17 And so my wife and I established our home in  
18 Allentown. It's kind of the center of the universe  
19 for the family. And as a result, kind of I -- I live  
20 in Allentown, I have to deal with the long commute to  
21 Philadelphia.

22 Q And I'd like to -- I'd like to kind of go through  
23 the various steps. You say you started at Lucent  
24 making semiconductors?

25 A Well, yes. At the time it was called AT&T.

Mr. Finnegan - Direct

83

1 Q It was AT&T?

2 A Yes, it was. And that was in 1985. And I worked  
3 as a semiconductor production engineer from '85 to  
4 '92. In 1992, I moved to AT&T's international  
5 licensing group, which was located about an hour away  
6 in Liberty Corner, New Jersey. And so I worked there  
7 for about nine years, part of the licensing team.  
8 And during that period of time, in 1994, AT&T spun  
9 out Lucent Technologies, so then it separated from  
10 AT&T.

11 When it separated Lucent Technologies  
12 retained Bell Laboratories, probably the premier  
13 research institute at the U.S. at the time, the  
14 inventor of the transistor, the inventor of the  
15 laser, also, the inventor behind the Big Bang Theory,  
16 the actual theory, not the TV show. And I worked  
17 with the licensing team on primarily -- to start,  
18 with semiconductor licensing issues because I had  
19 been recruited from the semiconductor group, but then  
20 expanded.

21 Q Great. Let me --

22 A Sorry.

23 Q Let me stop you there --

24 A Okay.

25 Q -- because you talked about the licensing. First

Mr. Finnegan - Direct

84

1 of all, Bell Labs and Lucent and AT&T, did they all  
2 have patents?

3 A Yes, they did.

4 Q And you talk about licensing the patents. What  
5 do you mean by that?

6 A Sure. So in AT&T's role and then also Lucent's  
7 role, Lucent had a fundamental -- a large collection  
8 of patents Bell Laboratory Ph.D.s and scientists were  
9 constantly creating, and, in fact, it was a  
10 requirement of the government back in 1956 that AT&T  
11 at the time, with the invention of the transistor,  
12 broadly licensed that invention to the world. So it  
13 became a -- it started a culture of licensing. And  
14 by licensing, I mean that the company would go to  
15 other -- Lucent or AT&T would go to other companies  
16 and begin a licensing discussion and present to that  
17 company the patents that Lucent owned that it thought  
18 the company on the other side may need a license to,  
19 or should take a license to.

20 Q And would they have to pay a royal -- or be  
21 expected to pay a royalty for it?

22 A And the negotiation usually went where the other  
23 company would then most often speak to the pile of  
24 patents that they had and say here's -- so Lucent  
25 would say here's the pile of patents that we think

Mr. Finnegan - Direct

85

1 are of interest to you, and the other company would  
2 say well, here's the patents that we think are of  
3 interest to you, Lucent, and then we would usually  
4 resolve it with a license -- some kind of licensing  
5 arrangement.

6 Q Cross-licensing?

7 A Yes, it would be a cross-license. So a license  
8 would be extended from both parties to the other.  
9 Effectively, we would call it patent peace. And by  
10 that, it would mean that both parties could then go  
11 back to doing the business that they do and know  
12 that -- I think yesterday we kind of described patent  
13 as being a boundary condition or kind of a piece of  
14 property. It allowed you to cross over that property  
15 to use that technology and go about your business.

16 Q Now, how long were you with Lucent in that  
17 business, that licensing?

18 A Sure. And I apologize if I get the dates a  
19 little bit off, but I think that was 1992 to about  
20 2001.

21 Q Okay. And, you know, you left Lucent at some  
22 point?

23 A Yes, in 2001, a group of Lucent executives left  
24 to form a company called Thinkfire Services. And  
25 Thinkfire Services was a patent consulting company.

Mr. Finnegan - Direct

86

1 So we had recognized at the time at Lucent that our  
2 skill set was kind of unique. A lot of companies did  
3 not understand this business, a lot of companies did  
4 not understand the relationship between cross-  
5 licensing, and we thought there was an opportunity  
6 for us to form a company which could provide these  
7 same patent perspective and experience to support  
8 their companies as they both create new IP and as  
9 they deal with licensing issues. So most of our  
10 companies, our clients were very similar to Lucent in  
11 terms of large, multinational companies that we then  
12 provided some support to.

13 Q And did you consult with companies on defending  
14 themselves against license claims as well as  
15 licensing itself?

16 A Yes.

17 Q Now, so when was it that you finished your tenure  
18 at that company?

19 A I think that was in 2004, 2004 or 2005. And then  
20 I did a little bit of consulting for a short time,  
21 and then I took a job in Munich, Germany working for  
22 a company called Qimonda, and that's Q-I-M-O-N-D-A.  
23 And Qimonda is a semiconductor company. They made --  
24 or they made DRAM semiconductor devices, and DRAMs  
25 are kind of the memory of the -- the memory chips.

Mr. Finnegan - Direct

87

1 Qimonda was a \$5 billion company. It had been spun  
2 out of Siemens and then Infineon, so it wasn't a  
3 small company. It was actually quite large. And  
4 there I managed the entire patent function, a team of  
5 about I think 60 or 70 people.

6 Q And then there came a time when you were offered  
7 a position at Comcast?

8 A Yeah, that's correct. So I was at Qimonda for  
9 just about a year, or I was there even less than  
10 that --

11 Q And you were not commuting from Allentown?

12 A No. No, for that job I -- we moved to Munich.  
13 But -- no, I was contacted by a recruiter who's --  
14 who asked me if I was a fan of the Eagles and I liked  
15 cheesesteaks, please give him a call back. And so I  
16 discovered that this opportunity was with Comcast.

17 Q You took the job at Comcast?

18 A Yes, I did, in September of 2007.

19 Q Okay. And, again, the title -- why don't you  
20 tell the jury what it is?

21 A Sure, my title -- my title is Vice President,  
22 Strategic Intellectual Property.

23 Q Now, who -- thinking about what your job is  
24 today, what your work is today, who created the  
25 strategic intellectual property enterprise within

Mr. Finnegan - Direct

88

1 Comcast?

2 A Humbly, I can say it was me. I was the first  
3 person hired at Comcast whose sole responsibility was  
4 patents, intellectual property. I was the first  
5 businessperson hired in this -- in this role.

6 Q Now, let me back up a little bit and talk a  
7 little bit about Comcast. Comcast we know as a cable  
8 company. Has it grown as a cable company over the  
9 years?

10 A Sure. So Comcast was first founded in 1963 by  
11 Ralph Roberts when he purchased a cable franchise in  
12 Tupelo, Mississippi, and from that, grew the company  
13 to the size that it is today. His son, Brian  
14 Roberts, is now our Chairman.

15 Q And what other business activities did Comcast  
16 add over the years?

17 A Sure. As the company has evolved and as  
18 technology has evolved, Comcast has gone from just  
19 offering cable television services. It's offered  
20 internet services to the home, it offered home -- it  
21 offers home phone services, it offers home security  
22 services. In 2011, it began the purchase of NBC  
23 Universal, so it owns the NBC family, it owns the NBC  
24 television channels, it owns Universal Studios, and  
25 it owns the Universal amusement parks. So the



Mr. Finnegan - Direct

89

1 company has continued to grow year after year.

2 Q Now, you mentioned that -- you testified that you  
3 had worked for at least -- more than one company, but  
4 at least one with large patent portfolios?

5 A Yes.

6 Q When you got to Comcast did you find that this  
7 company had a large patent portfolio?

8 A Relatively speaking, no. I think we probably had  
9 about 200 U.S. patents at the time in 2007.

10 Q And were they concentrated in any particular  
11 area?

12 A As you can imagine, they were concentrated in the  
13 place that they were focused in doing business at the  
14 time, which was mostly in the video space.

15 Q Okay. Now, you then have Comcast as a company of  
16 some size with patents concentrated in one area. Was  
17 that a healthy picture?

18 A No. No, I don't think so from my perspective,  
19 and I believe, from what I've been told, was the  
20 reason for creating the position, was that as Comcast  
21 had grown in size, it recognized that maybe it needed  
22 to pay a little bit more attention to patent issues  
23 and needed to have a business perspective just kind  
24 of overseeing what it thought its next steps might  
25 be.

Mr. Finnegan - Direct

90

1 Q Was -- did you develop a program within Comcast  
2 for generating patents internally?

3 A Yes, I did. So one of the first things I noticed  
4 in my experience from Lucent and Qimonda and then  
5 also as a consultant to various companies was there  
6 was sort of a play book, sort of a perspective that  
7 you could build about what we sometimes -- I'm sorry,  
8 I'm going to throw some terminology around. We call  
9 it patent harvesting or invention capture. And the  
10 issue there is that while Comcast was quite  
11 sophisticated in developing new products, it really  
12 didn't have in place the processes to capture those  
13 ideas.

14 So in the first year in 2007 into 2008, we  
15 developed what most sophisticated technology  
16 companies have, which is a patent committees process,  
17 and we, instead of having a single attorney kind of  
18 sitting in his room waiting for engineers to come to  
19 him, what we did is we took the story out to the  
20 street, or out to the company. And so we established  
21 a communication plan with our inventors, we made sure  
22 that they knew about the patent program, we included  
23 an incentive reward so that inventors would be paid  
24 for their inventions, we made sure that senior  
25 management was recognizing it better so the CEO would

Mr. Finnegan - Direct

91

1 sign a letter of thanks as those inventors invented.  
2 And I think in the first year, we probably went from  
3 about 20 years that we evaluated from a patenting  
4 perspective up over to about 130 ideas. And, again,  
5 that's not speaking to -- I didn't cause the level of  
6 innovation to uptick. We just simply put in place a  
7 process for -- a place for the inventors to come that  
8 would be more conducive to collecting those ideas.

9 Q By the way, before I follow up on that, are these  
10 technology people, are these the ones who are going  
11 to be in this new building?

12 A Yeah, so -- and the other -- I think the  
13 interesting thing when you think about Comcast's  
14 growth, I think at the time I started in 2007, the  
15 technology and products group was only about 50  
16 people big. And now what we have within Comcast  
17 thinking about new ideas is -- that team is 5,000  
18 people big. And they're currently deployed in all  
19 sorts of buildings around the Philadelphia area, so  
20 they're going to consolidate into that single  
21 building at 1800 Arch Street.

22 Q Okay. How big is that building going to be?

23 A It's going to be the tallest building in  
24 Philadelphia and the tallest outside of New York and  
25 Chicago.

Mr. Finnegan - Direct

92

1 Q Now, getting back to this question of developing  
2 the patents, how have you done over those nine or so  
3 years that you've been (indiscernible) intellectual  
4 property that you've done in generating internally  
5 patents?

6 A Sure. So I think in 2007, our number was around  
7 20 patents issued in the U.S. Patent Office, and this  
8 past year our number was almost 200, 200 per year.  
9 And we now own a -- we have a patent portfolio of  
10 1,000 U.S. patents and about an additional 800 patent  
11 applications. And that's the -- that's the  
12 inventions that are in the Patent Office being  
13 considered. I think they talked yesterday about  
14 sometimes that's a three year or five year process  
15 for the Patent Office to evaluate those ideas and  
16 decide if they're patentable.

17 Q Now, Mr. Finnegan, those internally generated  
18 patents, are they in fields where Comcast presently  
19 operates?

20 A That's correct, yes.

21 Q For example, does -- are these folks generating  
22 cellular phone patents?

23 A Primarily, it's in --

24 Q Well, first, the answer, is that a yes or no?

25 A No.

Mr. Finnegan - Direct

93

1 Q Okay. Explain.

2 A Sure. So, primarily, in the business, as we  
3 currently operate -- and I paused only a little bit  
4 because some of the base networking features of the  
5 telecom system you could say possibly relate to  
6 cellular technology, but primarily in the business as  
7 we currently operate, video, internet delivery, et  
8 cetera.

9 Q And wired phone?

10 A Yeah, exactly. Yes.

11 Q But not cellular, in general?

12 A Correct.

13 Q Okay. So the answer is no, they are not  
14 generally -- would a company be interested -- a  
15 company like Comcast be interested in getting patents  
16 outside its own fields?

17 A It could be. And, in fact, that was part of the  
18 strategy I introduced to the company was the idea of  
19 thinking about what companies you may -- what  
20 companies may approach you, what companies may  
21 approach Comcast, in a -- wanting to start a  
22 licensing discussion, to have a patent discussion.  
23 And it's the profile of those companies that sort of  
24 dictates what patents you might want to have. And I  
25 hope that's not too confusing, but to kind of

Mr. Finnegan - Direct

94

1 describe it a little bit further, if -- and I'll go a  
2 little bit sideways here -- but if Comcast were  
3 having a patent discussion with a medical company,  
4 Comcast's portfolio of video patents wouldn't really  
5 look very valuable to a medical company. So what  
6 Comcast would need in a discussion with a medical  
7 company would be patents related to the medical  
8 field. I hope that -- so yes, so Comcast thinks and  
9 I think about places where Comcast may need to have  
10 patents outside of the field that it operates in  
11 today.

12 Q Because you want to be able to tell that medical  
13 company to do what?

14 A So --

15 Q To use your patent?

16 MR. RIOPELLE: Objection, Your Honor,  
17 getting a little leading.

18 MR. HANGLEY: I'll withdraw. And that is  
19 leading. I apologize.

20 BY MR. HANGLEY:

21 Q What is it that you want to be able to say to the  
22 hypothetical medical company when you negotiate with  
23 your medical patent?

24 A Sure. In very simple terms, I think what you're  
25 trying to do is understand -- what you're trying to

Mr. Finnegan - Direct

95

1 say to the medical company is I have -- I own some  
2 technology that's in your space, you own some  
3 technology that may be in my space, so let's first  
4 talk about that. And secondly, let's see if we can  
5 get to a place where maybe we can -- we can just get  
6 past this problem, and, you know, going back to sort  
7 of let's clear the decks, let's go back to, you know,  
8 do some kind of cross-license, and let's go back to  
9 competing in the marketplace.

10 Q Now, we've talked about how Comcast had moved  
11 into phone technology. Is Comcast, by the way,  
12 moving into cellular technology, cell phone  
13 technology?

14 A Sure, it's been announced that we're going to be  
15 moving into cellular technology --

16 Q Okay.

17 A -- cellular services.

18 Q Okay. Now, let's see, Sprint is a cell phone  
19 company?

20 A Yes, it is.

21 Q Verizon is another one?

22 A Yes, it is.

23 Q Has Verizon in any way moved into areas in which  
24 Comcast conducts business?

25 A Sure. Yes, Verizon offers home video service

Mr. Finnegan - Direct

96

1 today.

2 Q And what's that called?

3 A Fios.

4 Q Now, let me show you, if I may -- Mr. Dyer, may  
5 we see Exhibit 803?

6 MR. RIOPELLE: Your Honor, I would object  
7 to the document being published to the jury until  
8 they establish -- it's hearsay, so they need to  
9 establish admissibility under 803(6) to 901 before  
10 they can show it to the jury. I mean he can show it  
11 to the witness --

12 THE COURT: No.

13 MR. RIOPELLE: -- and let him establish  
14 that.

15 THE COURT: He has to lay a foundation  
16 first. That's the way we will proceed unless there  
17 is an agreement.

18 MR. HANGLEY: I thought it was already  
19 accepted. I thought you and I discussed it this  
20 morning, Mr. Riopelle.

21 MR. RIOPELLE: No, no, we're --

22 MR. HANGLEY: But let's -- but let's not  
23 waste time.

24 THE COURT: No, wait a minute.

25 MR. RIOPELLE: We were talking about a



Mr. Finnegan - Direct

97

1 different agreement, Mr. Hangley.

2 MR. HANGLEY: Let's not waste any time,  
3 Your Honor. I'll just let the witness look at it  
4 here.

5 THE COURT: Fine. And what we'll do, the  
6 exhibit will show on counsels' screens and on my  
7 screens, but not on your screens, until the document  
8 is authenticated and offered into evidence. Mr.  
9 Hangley?

10 BY MR. HANGLEY:

11 Q I'm showing you a copy of PX-803001, which I will  
12 describe as a document captioned, "Intellectual  
13 Property Business at Comcast as Presented to Tony  
14 Werner and Art Block," and it's got a date on the  
15 first page of November 5, 2007. Do you recognize  
16 that document?

17 A Yes, I do.

18 Q Is it a document that you prepared?

19 A Yes, it is.

20 Q Is it a document you prepared at or about the  
21 time of its first page date, which is November of  
22 2007?

23 A Yes, it is.

24 MR. HANGLEY: Offer it into evidence, Your  
25 Honor.

Mr. Finnegan - Direct

98

1 MR. RIOPELLE: Objection. Under 803(6),  
2 the made us go through all of those three points  
3 under 803(6) and they should have to do it now too.

4 THE COURT: The witness who created the  
5 document is here in court.

6 MR. RIOPELLE: That is correct, but under  
7 803(6), there are two other requirements that the  
8 witness needs to testify to before it becomes  
9 admissible under the hearsay exception.

10 THE COURT: That's if a record custodian  
11 offers it.

12 MR. RIOPELLE: No, I believe it's -- the  
13 document is itself hearsay unless it's going to be  
14 used as a business record.

15 (Pause in proceedings.)

16 THE COURT: (Indiscernible).

17 MR. HANGLEY: Does that make any sense to  
18 you, Mr. Riopelle?

19 MR. RIOPELLE: This is what you made us go  
20 through before this trial.

21 MR. HANGLEY: No, that was not --

22 THE COURT: No, no, no.

23 MR. HANGLEY: -- what I made you go  
24 through, Mr. Riopelle.

25 THE COURT: No. We're going to take a

Mr. Finnegan - Direct

99

1     timeout on that. I don't want any arguments in  
2     court. We'll talk about it.

3             THE COURT: Is this a document that you  
4     created?

5             THE WITNESS: Yes, Your Honor.

6             THE COURT: I don't think 803(6) refers to  
7     or covers a document where the author of the document  
8     is testifying. 803(6) covers documents where a  
9     custodian is testifying with respect to other  
10    documents which are considered business records, and  
11    the question is whether they are admissible as  
12    business records.

13            The reason for all this, let me explain it.  
14    You've heard the term "hearsay" in this exchange.  
15    Hearsay is where something is created by someone out  
16    of court. Most often it relates to statements made  
17    out of court. A statement made by someone out of  
18    court cannot be offered in evidence in court unless  
19    the witness is here and then the witness is here to  
20    tell us about it, or under certain circumstances, and  
21    I hate to tell you how many exceptions there are.  
22    About 24 exceptions to this hearsay rule. We're not  
23    going to get involved in all of them, but there are  
24    certain exceptions to the hearsay rule and they're  
25    based on indicia of reliability of the hearsay

Mr. Finnegan - Direct

100

1 statement. I'm not going to give you examples except  
2 to say that in my judgment, when the author of the  
3 document is in the courtroom this book doesn't apply.  
4 You don't have to learn the book. I do, and I'll do  
5 my very best to keep these exchanges short. And now  
6 the objection is overruled and you may proceed.

7 MR. RIOPELLE: Thank you, Your Honor.

8 MR. HANGLEY: May we publish this to the  
9 jury now?

10 THE COURT: Yes, you may. It should be on  
11 your screens.

12 MR. HANGLEY: Mr. Dyer, I'd like to see  
13 803. Is it up?

14 MR. DYER: Yes, it is.

15 (Pause in proceedings.)

16 BY MR. HANGLEY:

17 Q What was this document, sir?

18 A So this is a document that I presented to my  
19 bosses, Tony Werner and Art Block, just less than 60  
20 days after I had joined the company --

21 Q Okay, let me ask you --

22 A -- after I joined Comcast.

23 Q Let me ask you first, who is Tony Werner?

24 A So Tony Werner is -- at the time he was the Chief  
25 Technology Officer of Comcast Cable. He's now the

Mr. Finnegan - Direct

101

1 President of Technology and Products. And then --  
2 and then Art Block?

3 Q I'll ask you about Art Block as well.

4 A And then so Art Block is the general counsel of  
5 Comcast Corporation.

6 Q Now, I'm not going to ask you to look at all of  
7 the pages, but please go to page two. Now, what --  
8 was this -- how long have you been (indiscernible)?

9 A I think, as I said, less than 60 days.

10 Q Okay. And this was your first flight of  
11 recommendation for a global program?

12 A Yes, that's correct.

13 Q Okay. And on this page, have you sketched out  
14 the areas that are -- that you want the company to go  
15 into?

16 A Yes, so these are the first things I thought we  
17 should focus on.

18 Q Okay. Did the company buy in to what you wanted  
19 to do with the Strategic Intellectual Property  
20 Program?

21 A Yes, they did.

22 Q Now, I see -- if we can go to page 16 -- that  
23 you've got a heading that says, "Our portfolio needs  
24 to grow three ways." Run through them for me, will  
25 you?

Mr. Finnegan - Direct

102

1 A Sure. So this speaks to -- the white section on  
2 top, which is organic growth, speaks to what I found  
3 at Comcast when I arrived, which was that, and no  
4 disrespect intended, but the role was from the patent  
5 attorney who was there was really a reactive role,  
6 and so he would sort of wait for inventors to come to  
7 him and say I think I have an idea, and then he would  
8 go about his business of trying to see if it was a  
9 patent.

10 I wanted to address one -- and it shifted a  
11 little bit. It's broader than just invention on  
12 demand. But I wanted us to have a more proactive  
13 approach towards patenting within the company. And  
14 so the patent team, which includes some people that  
15 work for me, as well as the patent legal team, as I  
16 mentioned earlier, goes out and gets the word out  
17 within the -- within the Comcast engineering  
18 communities that patents are important to the company  
19 and we should attempt to capture those ideas and file  
20 them for patent consideration.

21 Q All right. I see that the comment is that it's  
22 time consuming, but it does (indiscernible)?

23 A Yes, it does.

24 Q Now, the next column is -- or the next row is  
25 patent acquisition, which you describe as an option

Mr. Finnegan - Direct

103

1 to quickly grow a portfolio. Why is that and what  
2 was the difference?

3 A So patent acquisition was the idea of buying  
4 patents from other companies. And, you know,  
5 obviously, if you can buy a patent immediately, you  
6 would then have that patent in your portfolio, where  
7 the effort by the inventors was a long-term effort  
8 and was something we needed to do immediately, but  
9 its impact wasn't going to -- wasn't going to play  
10 out until many years later.

11 Through patent acquisition, you could go  
12 out and actively buy patents that were available for  
13 sale. And from my experience at other companies, I  
14 knew that this was something that was kind of really  
15 beginning in the marketplace at that time.

16 Q And I see your comment was what?

17 A So my comment says, "Best pursued for patents of  
18 interest to aggressors and outside of cable."

19 Q Aggressors, meaning who?

20 A So aggressors would be those companies that would  
21 be approaching Comcast asking us to talk about  
22 patents, asking to talk about whether or not we  
23 needed a patent license to their inventions.

24 Q In the interest of time, I'm going to ask that  
25 you move up to page 24. If we can put that on the

Mr. Finnegan - Direct

104

1 screen? Good. This page is called "IP  
2 Efforts/Necessary Resources," and I see you've got on  
3 the left a column called "Portfolio Creation?"

4 A Yeah, so the topics that we just talked about,  
5 which was the internal efforts -- well, not the  
6 internal efforts, but the idea of how to strengthen a  
7 patent portfolio, were represented in those two  
8 boxes.

9 Q Okay. Patent creation and patent acquisition?

10 A Correct.

11 Q Now, I see you've got on the other side, the  
12 right side, "Licensing and Litigation." What do you  
13 mean by that?

14 A So there -- what I was speaking to is that sort  
15 of companies have a choice as to -- I found some big  
16 companies in my consulting days to be rather passive  
17 with respect to where licensing discussions may take  
18 place. So, again, in my first 60 days at the  
19 company, what I said was, as we are in this space, in  
20 cable and in the telecom space and my background was  
21 in telecom, we should at least be thinking about do  
22 we have a strong portfolio to use as a counter  
23 assertion should we get into any patent discussions  
24 with any of the types of companies listed.

25 Q Okay. Am I -- tell me -- you referred to people



Mr. Finnegan - Direct

105

1 as -- companies like this as aggressors earlier?

2 A Yes, I did.

3 Q Okay. And I see that the first bullet point, is  
4 that "Preparation?"

5 A That's "Preparation."

6 Q For Verizon, Sprint, AT&T. Why were companies in  
7 those fields, cellular phone companies, why were they  
8 at the top of your list?

9 A Well, as I said, I think, you know, there was a  
10 convergence between cable and telecom. Handsets were  
11 doing more things that you might do in your home in  
12 terms of, you know, just -- the technology was  
13 starting to get similar, and so they were three  
14 companies that we should be prepared for possibly to  
15 have a discussion with, and also competing with us  
16 sort of at the service provider level.

17 Q Okay. Now, you said -- you used the term  
18 "countersue." What do you mean by that? Why is --  
19 why is it important to counter?

20 A Sure. So my recommendation to the company, based  
21 on my experience at both Lucent and Qimonda, is that  
22 I recommended to Comcast that we think about this as  
23 playing strong defense, that we think about this as  
24 having a strong patent portfolio to react to  
25 aggressors, and not as a program. There are some

Mr. Finnegan - Direct

106

1 companies -- and we did it at Lucent -- I would  
2 describe Lucent as an aggressor -- where Lucent went  
3 out and talked to companies they actually expected  
4 some level of compensation when they did a cross-  
5 licensing deal. I view this more as sort of playing  
6 defense.

7 Q Okay. Then I think the only reason why I wanted  
8 to ask you about this is the opening statements,  
9 which you were here for. There was a remark that  
10 Sprint and Comcast have a friendly, cooperative,  
11 (indiscernible) relationship during this time period,  
12 but you're describing them here as an aggressor?

13 A Well, yes, I did, and this -- and I changed my  
14 opinion shortly after -- maybe not shortly after, but  
15 sometime after, as this -- I was still 60 days in. I  
16 think I was still speaking to different leads from  
17 the different business groups, different leads from  
18 the different engineering groups, and I came to  
19 realize that Sprint was, you know, a business partner  
20 of Comcast and it was less likely that we were going  
21 to have an issue of a patent discussion between  
22 Comcast and Sprint.

23 Q But --

24 A I thought -- I thought it was less likely.

25 Q When did that opinion change? That is -- let me

Mr. Finnegan - Direct

107

1 be clear on that. When did you decide that, in fact,  
2 there was a friendly relationship with Sprint?

3 A I think, you know -- again, I was there two  
4 months. I want to say over the next few months, I  
5 learned that Comcast and Sprint were working together  
6 developing new wireless businesses and were investing  
7 together. And so from my discussions with the  
8 corporate development people who are the people that  
9 kind of do the company to company business deals, I  
10 came to learn that we were fairly cordial in our  
11 business discussions and fairly friendly.

12 Q Okay.

13 A I'm sorry, I shouldn't use the word "fairly." We  
14 were. I'm putting a caveat on that.

15 Q Okay. Let me show you another document which I  
16 will not asked to be published to the jury just yet.  
17 This is PX-802. Can you identify that for the jury?

18 A Sure. So this document is title "Strategic  
19 Intellectual Property Monthly Update, February 2008,"  
20 and it was a document I created for my bosses in  
21 February of 2008.

22 Q And is this -- I'm going to switch with you.

23 MR. HANGLEY: Move it's admission, Your  
24 Honor.

25 THE COURT: Any objection?

Mr. Finnegan - Direct

108

1 MR. RIOPELLE: Just the same objection,  
2 Your Honor.

3 THE COURT: Well, it's not -- it is a  
4 business record, but the author is here. And the  
5 rule to which you keep referring is applicable when a  
6 record custodian seeks to move into evidence business  
7 records without the author of the record being in the  
8 courtroom.

9 MR. RIOPELLE: I'm not sure that I agree  
10 with you, Your Honor.

11 THE COURT: Fine. Well --

12 MR. RIOPELLE: But --

13 THE COURT: -- that's your --

14 MR. RIOPELLE: -- you're the Judge and I'm  
15 not --

16 THE COURT: That's your privilege. The  
17 objection is overruled. You may proceed.

18 MR. HANGLEY: May we show that on the  
19 screen, please?

20 (Pause in proceedings.)

21 BY MR. HANGLEY:

22 Q Now, did you do these kinds of reports  
23 periodically?

24 A I did. The intention was monthly. Sometimes it  
25 wasn't every month, just based on people's

Mr. Finnegan - Direct

109

1 availability, but yes.

2 Q And I'm showing you this particularly to draw  
3 your attention to page four. Now, we're still here  
4 and, once again, you're talking about patent  
5 acquisition?

6 A Yes.

7 Q "Corps to approach," is that "corporation?"

8 A That's "corporation, yes."

9 Q Okay. And you've got two columns across the top,  
10 "Approach Directly" and "Approach via Third Party?"

11 A Yes.

12 Q What's -- why would you draw the distinction?

13 A Well, there is a distinction between trying to --  
14 so what I -- so what I was trying to do with this was  
15 identify companies that would -- that I wanted to  
16 start a conversation with about whether or not they  
17 were willing sellers of patents. As we talked about  
18 a few minutes ago, I thought this was a way for us to  
19 expand our patent portfolio. But the patent world  
20 can be a little bit aggressive sometimes. And so I  
21 recognized that there was some companies out there  
22 that if I said are you interested in selling me any  
23 patents, what they might say is no, but, instead,  
24 let's talk about the patents that you need to take a  
25 license to and that you should pay me royalties on.

Mr. Finnegan - Direct

110

1           So I didn't want to have that conversation  
2 directly. I actually wanted to try to approach them  
3 sort of from a third party's -- if you think about --  
4 think about, you know, an old story about Disney  
5 building Disney World in Orlando, you know, they  
6 bought that real estate by using a third party. I  
7 kind of wanted to at least introduce the concept of  
8 conversation, just not through me, from an  
9 independent company just to take -- kind of take  
10 their temperature.

11 Q   Okay. And now, over on the left are companies  
12 that you'll talk to directly?

13 A   Yes. So over on the left what I've done is I've  
14 sort of prioritized high, medium, and low, those  
15 companies that I felt was opportunities for me to  
16 approach directly, and I prioritized them, and I  
17 have -- yes, and so that's what you're seeing on that  
18 slide.

19 Q   Okay. Is that a high degree of confidence that  
20 you can talk to them without running into this kind  
21 of problem?

22 A   Yes. So the belief there is it's probably less.  
23 There's probably some consideration on might they  
24 have interesting patents that I would care about,  
25 because at this time I'm still a very small team. I

Mr. Finnegan - Direct

111

1 really hadn't grown my team out yet in February.

2 Q (Indiscernible).

3 A Okay. So it was still a small team, so this was  
4 really about who did I feel we could even have a  
5 conversation with? And I do list Sprint there on the  
6 high side.

7 Q Okay. That's -- that's a complete turnaround  
8 from where you were earlier when you had them listed  
9 as an aggressor (indiscernible)?

10 A Yes, and I -- in February, by this time I  
11 recognized that Sprint and Comcast were business  
12 partners, and so I felt with that cordial business  
13 relationship, this was a company that I wanted to  
14 approach. I think at the time -- I don't think at  
15 the time, but I know at the time we had had an issue  
16 with Verizon. And so I saw Sprint as potentially a  
17 place maybe that would have interesting patents for  
18 us to at least consider acquiring.

19 Q I'd like to know a little more about how this  
20 strategic intellectual property part of Comcast's  
21 business works. You don't do it all by yourself?

22 A No, I don't.

23 Q Okay. What are the three or more areas in  
24 which -- that get involved in (indiscernible)?

25 A Sure. I think in the previous slide we spoke to

Mr. Finnegan - Direct

112

1 this idea of different resources. And so on my team  
2 we have Mr. Mark Dellinger, who sort of leads our  
3 outwardly facing patent acquisition efforts, and as a  
4 business person, as a negotiator, he's in charge of  
5 thinking about where -- sort of doing this work with  
6 me about acquisition, thinking about where we might  
7 go, and actually being involved in the engagement  
8 with companies.

9 In addition, I have a team that spends its  
10 time on the internal patent harvesting part, and  
11 those people are -- one is a previous patent  
12 examiner, a woman who worked at the Patent Office for  
13 a period of time, one person is an engineer who I  
14 hired from within the Comcast engineering community  
15 because that person has a great insight into the  
16 operations of the engineering team and lots of  
17 connections to help, again, get the -- do this  
18 function of getting the word out. I also have a  
19 person in that group that manages sort of the  
20 communication with the engineering community, and  
21 that's website announcements and recognition  
22 programs, et cetera.

23 Then the other kind of third part of my  
24 team is this team of patent engineering, and patent  
25 engineering are the group -- a group of three



Mr. Finnegan - Direct

113

1 engineers today that work on sort of the technical  
2 analysis of patents, not the legal analysis, but sort  
3 of the -- whether it's inventions inside the company  
4 or outside the company. But under my direct purview,  
5 there is no -- the legal team doesn't sit underneath  
6 me. The legal team is a separate --

7 Q You hadn't --

8 A -- separate group.

9 Q You hadn't mentioned that and I was  
10 (indiscernible).

11 A I'm sorry.

12 Q You do get the lawyers involved?

13 A Yes, the lawyers -- the lawyers work closely with  
14 us, yes.

15 Q Okay. Is this after or before you've done these  
16 other things?

17 A Sometimes it's together, sometimes it's the very  
18 beginning, and sometimes it's -- it depends.

19 Sometimes we're not involved in issues. Our role is  
20 greatly reduced when we get to the point of  
21 litigation and then maybe in some of the initial --  
22 the internal marketing of inside things, the legal  
23 team is, you know, less involved in that.

24 Q Oh, okay. Who's primarily reviewing -- I mean  
25 you do receive proposals of companies to sell you

Mr. Finnegan - Direct

114

1 portfolios of patents, is that correct?

2 A Yes, we do.

3 Q And who reviews them initially?

4 A Sure. So the process of reviewing patents that  
5 we are considering buying includes three kind of -- I  
6 always call it sort of the three-legged stool for the  
7 patent licensing business. One is evaluating the  
8 technical components of the patents that are offered.  
9 The second part is the business part of it. Do the  
10 patents apply to an industry that's growing or  
11 shrinking? And then the third part is the legal  
12 role, which is that idea of, you know, legally, does  
13 this patent feel like it's the -- an interesting  
14 thing for us to buy? So -- but the pro -- the way  
15 the process works -- sorry, long-winded answer.

16 Q It is.

17 A The way the process works is we start with the  
18 technical team. The technical team looks at the  
19 patents first. They begin the process.

20 Q Okay. Now, how many patents have -- has your  
21 team reviewed in your nine or ten years?

22 A Sure. So in the nine or ten years we've -- I  
23 think -- loosely speaking, I think we may have  
24 reviewed as many as 100,000 patents.

25 Q And how many have you decided to buy?

Mr. Finnegan - Direct

115

1 A About 200.

2 Q Now --

3 (Pause in proceedings.)

4 THE COURT: Maybe this is an appropriate  
5 time to break.

6 MR. HANGLEY: That's fine for us, Your  
7 Honor.

8 THE COURT: Good. I thought I picked a  
9 time that would work. Let me -- you may return to  
10 your seat, and you, Mr. Finnegan, may return to your  
11 seat. We'll continue the direct examination after  
12 lunch.

13 Let me tell you a little bit about our  
14 schedule. I haven't said that -- mentioned that to  
15 you. We generally recess for lunch somewhere between  
16 12:30 and 12:45. I try to recess at a break in the  
17 testimony, or if a witness is about to finish his  
18 testimony, we might go a little later. But,  
19 generally, we recess at 12:30 or 12:45.

20 We have a mid-morning break. It was a  
21 little early today. We take about an hour for lunch  
22 and recess mid-afternoon, and recess at day-end at  
23 around 4:15. In my experience, that should enable  
24 everyone to be able to catch trains or busses or  
25 rides and get home at a reasonable hour. If those

1 times don't work for you -- and I'm particularly  
2 turned about the day-end time. If you've got  
3 problems making a train or a bus, report that to one  
4 of my court officers. Mr. Cosgrove is going to be in  
5 court most of the time. I take my law clerk back  
6 into chambers. But tell him and we'll work with you.  
7 We'll try to work it out.

8 I generally give instructions every  
9 noontime and every day-end about not talking about  
10 the case among yourselves, and I'm going to give you  
11 that instruction very briefly now. This is what I  
12 covered yesterday in my preliminary jury  
13 instructions. No discussions about the case among  
14 yourselves. You got to wait until all the testimony  
15 is in. No discussions with anyone else. If anyone  
16 tries to talk to you about the case, say nothing,  
17 report that to me. And remember, counsel have been  
18 instructed not to have any contact with you at all,  
19 and I'm instructing you not to have any contact with  
20 counsel.

21 With that, we're recessed for lunch until  
22 about 1:45. Be sure to take your juror notebooks and  
23 the portfolios, or binders, into the jury room and  
24 leave them there. Have a good lunch. See you back  
25 oh, a little before 1:45.

1 (Jury out, 12:45 p.m.)

2 THE COURT: Be seated everyone. We have  
3 something to cover -- some things to cover very  
4 briefly. The Comcast acquisition policy for patents,  
5 when I made that statement at the hearing, oral  
6 argument, at issue in the case were the patent  
7 policies that implemented value of the patents and  
8 whether the patents were litigation worthy. Instead  
9 of permitting that testimony, in a general way, but  
10 not referring specifically to the 807 -- or 870  
11 patent, which was covered by the joint stipulation  
12 that I approved in February of 2015, I excluded from  
13 the patent acquisition policy evidence anything  
14 relating to the value of patents in general and the  
15 litigation worthiness of patents in general, pursuant  
16 to the patent acquisition policy.

17 So I see no need to read the proposed  
18 limiting instruction. Now, if that changes, if that  
19 situation changes based upon additional questioning,  
20 I'll expect you to renew the request, Mr. Riopelle.

21 MR. RIOPELLE: Thank you, Your Honor.

22 THE COURT: Secondly, Comcast filed this  
23 morning another motion, a motion to amend order  
24 regarding Comcast Cable Communications, LLC's omnibus  
25 motion and proposed order to admit unobjected to

1 exhibits into evidence. What was the reason for  
2 that, Mr. Goettle?

3 MR. GOETTLE: Your Honor, I realized last  
4 night that we had made a mistake in that motion. I  
5 had a mis -- I misunderstood Sprint's position on  
6 some 901 objections to documents. I thought we had  
7 reached agreement that we would not oppose on auth --  
8 that we would not object on authenticity grounds and  
9 Sprint would not object on authenticity grounds. I  
10 misunderstood the bidding and realized it last night,  
11 and, therefore, re-filed the omnibus motion to  
12 eliminate the exhibits from that motion that included  
13 Sprint 901 objections. So that's a smaller list, not  
14 by much. I think it -- I think it was about ten or  
15 15 documents that Sprint maintains its authenticity  
16 objections. And I removed them from the list. And I  
17 apologize for filing the original omnibus motion. I  
18 misunderstood.

19 THE COURT: No, that's all right. But I  
20 can tell you one thing we're not going to do. We're  
21 not going to go through an 803(6) foundation laying  
22 process for every exhibit on your exhibit list. Not  
23 going to happen. If that does happen, we'll never  
24 finish the case in two and a half weeks. It might  
25 take two and a half months. That will not happen.

1 I think I heard for the first time that  
2 Comcast is willing to agree to all of Sprint's  
3 exhibits, business records, or -- and I think Sprint  
4 had previously agreed or is willing to agree to all  
5 of Comcast's bus -- I'm referring to business  
6 records. Is that true, Mr. Goettle? And then I'll  
7 turn to you, Mr. Finkelson.

8 MR. GOETTLE: Your Honor, I think by and  
9 large, that's true. I don't think there's -- I'm  
10 worried about the lawyers sitting behind me that  
11 might know more than me. I think that is by and  
12 large true. I suspect it is 100 percent true. I  
13 don't know if there's outliers there where they're  
14 just a little bit too far afield. But in terms of --  
15 I think the majority, based on Your Honor's comments  
16 over the past few weeks about Comcast's objection to  
17 those documents, I think that what you just said is  
18 true and we will not be standing on the majority of  
19 our business record objections or authenticity  
20 objections.

21 THE COURT: All right. Mr. Finkelson?

22 MR. FINKELSON: Well, Your Honor, I  
23 apologize that I don't have the correspondence  
24 between the parties and the Court's instructions to  
25 set a pretrial conference handy, but the Court was

1 very clear. It gave Comcast an option during the  
2 pretrial conference to agree to Sprint's proposal  
3 that there weren't going to be either business  
4 records or authenticity objections, and Your Honor  
5 stated that Comcast needed to agree to both of those  
6 in order for us to have an agreement. And Comcast  
7 did not agree to that. It put us to our paces to  
8 prove every single business record, which Your Honor  
9 knows with respect to exhibits, we've submitted it.  
10 It elected not to accept that proposal. We proved up  
11 our business records, and there are a number of  
12 documents in the case, Your Honor, that Comcast we  
13 believe does have an authentication or hearsay  
14 problem with. It's not a situation like Your  
15 Honor -- like was presented today, Your Honor, with a  
16 live witness on the stand. It would be a different  
17 situation.

18 THE COURT: Well, Mr. Riopelle seems to  
19 disagree with me on 803(6). He can do that.

20 MR. FINKELSON: And I wasn't -- and I  
21 wasn't -- and I may disagree as well, Your Honor, but  
22 I was just staying that --

23 THE COURT: You do? I can still hear my  
24 evidence professor at law school covering this  
25 subject. And I've just looked at 803(6) and it just



1 simply does not apply when the author of the document  
2 is in the courtroom. You don't need the business  
3 records exception.

4 Now, if there's hearsay within the  
5 document, and there might be, then that's different.

6 MR. FINKELSON: Understood.

7 THE COURT: And the time to object is when  
8 the witness refers to other things in the documents,  
9 and then I will rule. But I am not going to require  
10 an 803(6) declaration with respect to each document,  
11 particularly since Comcast has -- were in the 800s  
12 already. I thought it very interesting that we  
13 didn't start with Exhibit Number 1. We started with  
14 Exhibit Number 803. That's a little disquieting for  
15 the Court. But we're not going to do that.

16 MR. FINKELSON: And we don't -- we don't  
17 plan to do that, Your Honor. There are a number of  
18 exhibits on Comcast's exhibit list to which we have  
19 objected. They're not in the scenarios like Your  
20 Honor has addressed today where there's going to be a  
21 live Comcast witness on the stand. There are  
22 documents that, for example, Comcast wants to  
23 introduce that are Sprint documents that Comcast has  
24 not authenticated or has not established an exception  
25 to the hearsay rule. We've objected to those. There

1 are not many of them.

2 THE COURT: They're Sprint documents. Did  
3 you produce them?

4 MR. FINKELSON: We did and they were not  
5 authenticated by any witness, Your Honor. Comcast  
6 did not -- was -- did not authenticate the document  
7 with --

8 THE COURT: Well, this is --

9 MR. FINKELSON: -- any witness.

10 THE COURT: We're just not going there.  
11 We're going to get -- we're going to try this case on  
12 the merits. We're not going to try this case on the  
13 rules I'm looking at here. You're going to agree to  
14 one another's documents.

15 MR. FINKELSON: Your Honor --

16 THE COURT: Now, there might be exceptions.  
17 There might be some exceptions. But I'm telling you  
18 I'm going to come down hard if I think there are  
19 objections that are hypertechnical and are not  
20 designed to advance the course of the trial.

21 MR. FINKELSON: And I understand that, Your  
22 Honor. But just to be fair and clear, what Your  
23 Honor just expressed was exactly Sprint's position  
24 from the outset. It's exactly what Sprint proposed  
25 at the pretrial conference.

1 THE COURT: Well, then why isn't that the  
2 deal?

3 MR. FINKELSON: Comcast wouldn't agree to  
4 it, Your Honor.

5 THE COURT: Are they --

6 MR. FINKELSON: Comcast wouldn't agree to  
7 it.

8 THE COURT: Are they willing to agree to it  
9 now.

10 MR. GOETTLE: As I stated before, Your  
11 Honor -- first of all, Your Honor, I understand where  
12 Sprint is coming from on this. Our focus was on the  
13 documents where we were contending -- we didn't  
14 appreciate the word matching of "core network" in the  
15 document.

16 THE COURT: Well, what you -- I understand  
17 that and --

18 MR. GOETTLE: So I should have been more  
19 clear with Sprint that that didn't extend to every  
20 one of their documents. They did do substantial work  
21 to submit these certifications, and I really -- when  
22 they came in I really hadn't thought about the  
23 ramification of all of that. So I understand what  
24 they're saying, but what I said earlier, Your Honor,  
25 stands. By and large -- there might be a few

1 exceptions I don't know of right now, but by and  
2 large, we are not objecting on the grounds that we  
3 had raised before in light of what the Court has told  
4 us over the past few weeks.

5 THE COURT: Well, what you were requiring I  
6 don't think is required by 803(6) to allow  
7 admissibility of a document as a business record.  
8 You were requiring testimony, for example -- and you  
9 touched on the example -- when the phrase "core  
10 network" is used in a Sprint document you were  
11 requiring someone who would testify that "core  
12 network" in that document means the same thing as the  
13 "core network" definition that was ruled upon by the  
14 Court. That's not going to happen. You'll cover  
15 that in cross-examination.

16 MR. GOETTLE: Yes, Your Honor.

17 MR. FINKELSON: And we understand your  
18 instructions, Your Honor, as well. We'll revisit our  
19 list of objections and --

20 THE COURT: So that means I can put away  
21 the 803(6) book?

22 MR. FINKELSON: I think if I --

23 THE COURT: I think I know --

24 MR. FINKELSON: I think if I say anything  
25 else about 803(6), Your Honor --

1 THE COURT: You're in trouble.

2 MR. FINKELSON: -- I'm in trouble. I may  
3 already be in trouble, but I'm --

4 THE COURT: No, you're not.

5 MR. FINKELSON: -- not going to say  
6 anything else about it.

7 THE COURT: No, you're not. This was --

8 MR. HANGLEY: Anybody notice what my  
9 exhibit number was?

10 THE COURT: 803.

11 MR. HANGLEY: That's why I --

12 THE COURT: That was --

13 MR. HANGLEY: -- picked it.

14 THE COURT: That was beautiful, Mr.  
15 Hangley.

16 MR. HANGLEY: Thank you.

17 THE COURT: Thank you. Thank you very  
18 much. And I assume about 700 of those exhibits are  
19 not coming into evidence. And the next time I tell  
20 you I want two copies of all of your exhibits that  
21 you've boxed for me, remind me that I'm not going to  
22 do that again. I'll sign the order granting the  
23 amended motion and we'll be back -- I don't think  
24 there are any issues. I'm still a little nervous  
25 about juror number 5. Nervous.

1 MR. HANGLEY: He stayed awake.

2 MR. FINKELSON: I saw him awake during Mr.  
3 Goettler's presentation. He seemed to be slipping a  
4 little bit during mine. Well, that's -- I don't  
5 think that's the juror's fault, Your Honor, but --

6 THE COURT: His body language tells me that  
7 he's just there.

8 MR. FINKELSON: I didn't see him -- at  
9 least I didn't see any sleepiness, but I --

10 THE COURT: Well, watch --

11 MR. FINKELSON: I'll keep a watch out for  
12 it.

13 THE COURT: Watch the jury. And I might  
14 have a standup if I see them losing interest. But  
15 the other eight of them are, in my judgment giving  
16 rapt attention to what's going on, and that's exactly  
17 what I want.

18 On that note, do we have anything else to  
19 address?

20 MR. HANGLEY: I think not.

21 THE COURT: Thank you. Then we're in  
22 recess until 1:45. Have a good lunch.

23 (Luncheon recess taken, 12:56 p.m.)

24

25

\* \* \*

I N D E X

PLAINTIFF'S OPENING STATEMENT

PAGE NUMBER

By Mr. Goettle

4

DEFENDANT'S OPENING STATEMENT

PAGE NUMBER

By Mr. Finkelson

41

PLAINTIFF'S WITNESSES

DIRECT

CROSS

REDIRECT

RECROSS

James Finnegan

By Mr. Hangley

81

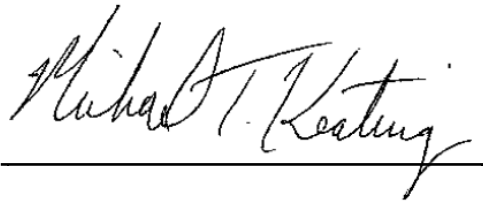
\* \* \*

CERTIFICATION

I, Michael Keating, do hereby certify that  
the foregoing is a true and correct transcript from the  
electronic sound recordings of the proceedings in the  
above-captioned matter.

2/1/17

Date

A handwritten signature in black ink, reading "Michael T. Keating". The signature is written in a cursive, flowing style. The first name "Michael" is written with a large, prominent "M". The middle initial "T." is written in a smaller, more compact script. The last name "Keating" is written with a large, prominent "K" and a long, sweeping tail that extends to the right. The signature is written above a horizontal line.

Michael Keating